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Nos. 05-204, 05-254, 05-276, 05-439

IN THE

Supreme Court of the United States

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*,
Appellants,

v.

RICK PERRY, *et al.*,
Appellees.

On Appeal from the United States District Court for the Eastern District of Texas

JOINT APPENDIX
Volume I of II

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CIVIL DOCKET FOR CASE
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Date Filed	Tab	Description
10/12/2003	1	Original Complaint filed. Cause: 28:1983 Civil Rights
12/03/2003	98	Trial brief by LULAC, Webb County TX, and Cameron County Texas
12/03/2003	99	Trial brief by Charles Soechting in 2:03-cv-00354
12/03/2003	100	Trial brief by Travis, County of in 2:03-cv-00354, Austin, City of in 2:03-cv-00354
12/03/2003	107	Revised Trial brief by "State Defendants" in 2:03-cv-00354
12/03/2003	108	Trial brief by GI Forum of Texas in 2:03-cv-00354
12/03/2003	115	Trial brief by "Dem Congress Intv"and "Jackson Plaintiffs"
12/15/2003	126	Transcript of Bench Trial 12/11/03 1:00 P.M. in Austin TX before Judge Higginsbothamn T John Ward and Lee H Rosenthal filed . Court Reporter: Susan Simmons

Date Filed	Tab	Description
12/15/2003	157	Page & Line designation of Mr Jim Ellis' deposition by Walter Session in 2:03-cv-00354
12/16/2003	184	TRANSCRIPT of Bench Trial Proceedings in AUSTIN TX held on 12/15/03 at 8:30 a.m. before Judge Higginbotham Ward & Rosenthal. Court Reporter: Susan Simmons.
12/16/2003	185	TRANSCRIPT of Bench Trial Proceedings in AUSTIN TX held on 12/15/03 at 1:00 p.m. before Judge Higginbotham Ward Rosenthal. Court Reporter: Susan Simmons.
12/17/2003	186	TRANSCRIPT of Bench Trial Proceedings in AUSTIN TX held on 12/16/03 at 8:30 a.m. before Judge Higginbotham Ward & Rosenthal. Court Reporter: Susan Simmons.
12/17/2003	187	TRANSCRIPT of Bench Trial Proceedings in AUSTIN TX held on 12/16/03 at 1:00 p.m. before Judge Higginbotham Ward & Rosenthal. Court Reporter: Susan Simmons.
12/17/2003	189	TRANSCRIPT of Bench Trial Proceedingsin AUSTIN TX held on 12/17/03 at 1:00 p.m. before Judge Higginbotham Ward & Rosenthal. Court Reporter: Susan Simmons.

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12/19/2003	190	TRANSCRIPT of Bench Trial Proceedings in AUSTIN TX held on 12/18/03 at 8:30 a.m. before Judge Higginbotham Ward & Rosenthal. Court Reporter: Susan Simmons.
12/19/2003	191	TRANSCRIPT of Bench Trial Proceedings held in AUSTIN TX on 12/18/03 at 1:00 p.m. before Judge Higginbotham Ward & Rosenthal. Court Reporter: Susan Simmons
12/19/2003	192	TRANSCRIPT of Bench Trial Proceedings in AUSTIN TX held on 12/19/03 at 8:00 a.m. before Judge Higginbotham Ward & Rosenthal. Court Reporter: Susan Simmons.
12/19/2003	193	TRANSCRIPT of Bench Trial held on 12/19/03 in Austin before Judge Ward; Judge Rosenthal; Circuit Judge Higginbotham. Court Reporter: Susan Simmons. 102 pages (not scanned - original document in Clerk's Office, Marshall TX)
12/20/2003	131	POST TRIAL Brief filed by Travis, County of in 2:03-cv-00354, Austin, City of in 2:03-cv-00354

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12/22/2003	134	POST-TRIAL SUBMISSION by Charles Soechting Chairman of the Texas Democratic Party in 2:03-cv-00354
12/22/2003	135	POST TRIAL Brief filed by "State Defendants" in 2:03-cv-00354
12/22/2003	136	FILED IN TYLER POST TRIAL Brief filed by "Dem Congress Intv" in 2:03-cv-00354, Jackson Plaintiffs in 2:03-cv-00354
12/23/2003	137	Post Trial Brief filed by TX-NAACP in 2:03-cv-00354
12/23/2003	139	Post Trial Brief filed by GI Forum of Texas in 2:03-cv-00354
12/29/2003	141	POST TRIAL Brief filed by LULAC in 2:03-cv-00354
01/06/2004	162	Memorandum Opinion before Higginbotham, Cir Judge, and Ward and Rosenthal, district judges: For the reasons set forth herein, we deny all relief requested by plaintiffs; Judgment will be entered for defendants. Ward, J., concurring in part & dissenting in part copy faxed/mailed to all attys & Judges Note: See Document #162 in Lead Case 2:03cv354 (ktd) Modified on 01/06/2004

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01/07/2004	163	Notice of appeal to Supreme Court by TX Democratic Party, Jackson Plaintiffs , Mayfield Plaintiffs , Manley Plaintiffs (Eddie Jackson, Barbara Marshall, Gertrude "Traci" Fisher, Hargie Faye Jacob-Savoy, Ealy Boyd, JB Mayfield, Roy Stanley, Phillis Cotle, Molly Woods, Brian Manley, Tommy Adkisson, Samuel T Biscoe, David James Butts, Ronald Knowlton Davis, Dorothy Dean, Wilhelmina R Delco, Gustavo Luis "Gus" Garcia, Samuel Garcia, Lester Gibson, Eunice June Mitchell Givens, Margaret J Gomez, Mack Ray Hernandez, Art Murillo, Richard Raymond, Ernesto Silva, Louis Simms, Clint Smith, Connie Sonnen, Alfred Thomas Stanley, Maria Lucina Ramirez Torres, Elisa Vasquez, Fernando Villareal, Willia Wooten, Ana Yanez-Correa, Mike Zuniga Jr, and plaintiff-intervenors, Gene Green, Chris Bell, Nick Lampson, Leser Bellow, Homer Guillory, John Bland, And Rev Wille Davis) of [162-2] order Fee paid (copies to attys & judges 1/7/04) (ktd) Modified on 01/09/2004

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01/07/2004	166	ORDER denying [164-1] motion "emergency" to stay the judgment pending appeal in 2:03-cv-00354, 6:01-cv-00158 (signed by Judge T. J. Ward Higginbotham & Rosenthal) cc: attys faxed 1/7/03 (poa) Modified on 01/07/2004
01/07/2004	168	Notice of appeal to supreme court by "Cherokee Cnty pla" of [162-2] order . Fee Status: not paid cc: attys & judges fax 1/7/04
01/08/2004	170	ORDER denying [169-1] motion to stay judgment pending appeal (signed by Judge T. J. Ward 1/8/04 cc: attys & 3-judge panel 1/8/04)
01/08/2004	171	ORDER denying [167-1] motion "emergency" to stay judgment pending appeal (signed by Judge T. J. Ward 1/8/04 cc: attys & 3-judge panel
01/09/2004	173	Notice of appeal to Supreme Court by Travis, County of and Austin, City of of [162-2] order . Fee Status: not paid (copies faxed/mailed to all attorneys and judges)

Date Filed	Tab	Description
01/15/2004	174	Judgment. For the reasons expressed in the ct's opinion dated 1/6/04, it is ORDERED that the plaintiffs take nothing by way of this suit. The ct renders judgment in favor of the defendants on all claims asserted against them in these consolidated redistricting cases (signed by Judge T. J. Ward; Patrick E Higginbotham & Lee H Rosenthal 1/15/04 cc: attys & judges fx/mld 1/15/04)
01/21/2004	181	NOTICE OF APPEAL by League of United Latin American Citizens-Statewide. Filing fee not paid.
01/27/2004	176	Notice of appeal by GI Forum of Texas, "Balderas' pla", LULAC, TX Lulac Dist 7 & 15, Eli Romero of [162-2] order . Fee Status: 300.00 Receipt #101998
02/17/2004	180	TRANSCRIPT of Bench Trial Proceedings held on 12/12/03 @ 1:00 in Austin TX before Judge Ward Higginbotham & Rosenthal. Court Reporter: Susan Simmons. (poa,) (Entered: 02/17/2004)

Date Filed	Tab	Description
10/18/2004	195	ORDER REOPENING CASE. The consolidated cases are on REMAND from the US Supreme Court for further consideration; the court sua sponte ORDERS the parties to submit supplement briefing in accordance with the schedule set forth herein; opening briefs by 12/6/04, together with any requests to supplement the record; simultaneously file response briefs by 12/30/04; briefs not to exceed 50 pages in length. Signed by District Judge T. John Ward; Lee H. Rosenthal, US District Judge; and Patrick E Higginbotham, US Circuit Judge on 10/18/04.
12/02/2004	198	SUPREME COURT OF THE UNITED STATES JUDGMENT as to 172 Notice of Appeal filed by Sheila Jackson Lee, Eddie Bernice Johnson, 176 Notice of Appeal filed by GI Forum of Texas, "Balderas' pla", League of United Latin American Citizens-Statewide, Texas LULAC Districts 7 and 15, Eli Romero, 163 Notice of Appeal filed by Texas Democratic Party, Jackson Plaintiffs, Mayfield Plaintiffs, Manley Plaintiffs, 173 Notice of Appeal filed by County of Travis, Texas, City of Austin TX. It is ordered that the motion of petr for

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		continued leave to proceed ifp in 03-9644 is GRANTED; the JUDGMENT is VACATED and the cases REMANDED to the USDC for further consideration. Appellants Eddie Jackson etal; American GI Forum of TX etal; Congresswom Sheila Jackson Lee and Congresswoman Eddie Bernice Johnson; and Travis County TX etal recover from Rick Perry, Governor of TX etal the sum of $1,200.00 for costs herein expended. Dated 10/18/04 Clerk's Costs: $1,200.00 ($300.00 to each set of named appellants)
12/06/2004	200	BRIEF filed *by Jackson plaintiffs and* by Democratic Congressional Intervenors. (Attachments: # 1 Affidavit of Dr. John Alford)(Hebert, J)
12/06/2004	201	MOTION for leave to file Amicus Curiae Brief by University Professors Concerned about Equal Representation for Equal Numbers of People.
12/06/2004	203	BRIEF filed *State Defendants' Opening Brief on Remand* by "State Defendants". (Taylor, William)

Date Filed	Tab	Description
12/06/2004	205	BRIEF filed *Remand Brief* by Texas State Conference of NAACP Branches. (Bledsoe, Gary)
12/06/2004	207	TRIAL BRIEF *Initial Brief on Remand* by County of Travis, Texas. (Hicks, Renea)
12/06/2004	208	TRIAL BRIEF *ON REMAND* by American GI Forum of Texas. (Attachments: # 1 Exhibit Exhibit B)(Perales, Nina)
01/14/2005	236	BRIEF *Reply Brief on Remand* filed by County of Travis, Texas. (Hicks, Renea) Modified on 1/14/2005
01/14/2005	237	Appellant's REPLY BRIEF by University Professors Concerned about Equal Representation for Equal Numbers of People. (Bickerstaff, R)
01/14/2005	240	BRIEF filed *in Reply by Democratic Congressional Intervenors and* by "Jackson Plaintiffs". (Hebert, J)
01/14/2005	241	BRIEF filed *State Defendants' Response Brief on Remand* by "State Defendants". (Attachments: # 1 Continuation of Brief)(Taylor, William)

Date Filed	Tab	Description
01/14/2005	243	BRIEF filed *in Response to State Defendants' Brief* by Texas State Conference of NAACP Branches. (Notzon, Robert)
01/18/2005	244	BRIEF filed *Supplemental Brief* by League of United Latin American Citizens-Statewide. (Rios, Rolando)
01/24/2005	248	BRIEF filed *The Post-Hearing Brief of Amicus University Professors in Response to Questions from the Court* by University Professors Concerned about Equal Representation for Equal Numbers of People. (Bickerstaff, R)
02/09/2005	253	TRANSCRIPT of Arguments held on 1/21/05 at 9:00 a.m. in Dallas TX before the Honorable Patrick Higginbotham, Honorable T John Ward,and Honorable Lee H Rosenthal. Court Reporter: Susan Simmonsn
06/09/2005	266	MEMORANDUM OPINION before Higginbotham, Cir Judge, and Ward and Rosenthal, district judges: For the reasons set forth herein, we deny all relief requested by pltf's. Judgment will be entered for defendants. Signed by Judge T. John Ward on 6/9/05.

Date Filed	Tab	Description
06/09/2005	267	FINAL JUDGMENT - For the reasons expressed in the court's opinion filed contemporaneously herewith, the court renders judgment in favor of the defendants on all claims. All claims asserted are dismissed with prejudice. Signed by Judge T. John Ward on 6/9/05.
06/25/2005	271	NOTICE by City of Austin TX *Notice of Appeal by Travis County and City of Austin* (Hicks, Renea)
07/06/2005	276	NOTICE OF APPEAL as to 267 Final Judgment, by all pla's. (fee will be overnighted)
08/02/2005	280	NOTICE OF APPEAL to the Supreme Court as to 266 Memorandum & Opinion, 267 Judgment, by American GI Forum of Texas. (ehs)
09/06/2005	283	US Supreme Court Case Number 05-276 for 280 Notice of Appeal filed by American GI Forum of Texas,. (ehs,)

REPORT OF JOHN R. ALFORD ON TEXAS CONGRESSIONAL REDISTRICTING

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November 14, 2003

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Introduction

I have been retained as an expert to provide an analysis relevant to the newly adopted Texas congressional district plan. I am a tenured associate professor of political science at Rice University. At Rice, I have taught courses on redistricting, elections, political representation, voting behavior, and statistical methods at both the undergraduate and graduate level. Over the last fifteen years, I have worked with numerous local governments on districting plans and on Voting Rights Act pre-clearance issues. I have previously provided expert reports and/or testified as an expert witness in voting rights and statistical issues in a variety of court cases, working for the U.S. Attorney in Houston, the Texas Attorney General, a U.S. Congressman, and various cities and school districts. In the most recent round of redistricting, I was retained as an expert to provide advice to the Texas Attorney General in his role as Chair of the Legislative Redistricting Board. I subsequently served as the expert for the State of Texas in the state and federal litigation involving the 2001 redistricting for U.S. Congress, the Texas Senate, the Texas House of Representatives, and the Texas Board of Education. I also have worked as an expert in redistricting and voting rights cases in New Mexico, Mississippi, Wisconsin, Florida, and Alabama. The details of my academic background and work as an expert are covered in the attached vita (Appendix A). My rate of compensation is $300 per hour.

The short time available to prepare this analysis necessitated writing this report while continuing my analysis. I will supplement my report with any additional work as it is completed. I also expect to respond with appropriate additional analysis where needed in response to other expert reports as they become available.

Summary of Key Conclusions

This report covers three areas in which the new congressional map for Texas raises clear concerns:

- **Mid-Decade Redistricting** - Replacing a legal existing congressional map mid-decade disrupts the ten years of representational stability that the Founders settled on, and that the Constitution specifies, as the appropriate trade-off between proportional accuracy and stability of representational arrangements inherent in geographical representation systems. Further, weakening the protective barrier provided by a decade long delay between the redistricting of the state legislature and the subsequent redrawing of congressional lines in the state legislatures that were shaped by the earlier state redistricting, opens the entire redistricting process, state and congressional, to undue national and political party influence. Far from being a proper exercise of state autonomy, mid-decade redistricting is both a result of, and an invitation to, national control of state redistricting decisions.

- **Racial Gerrymandering** – Four districts, the 15th, the 25th, the 28th, and the 29th in the new plan, reflect an excessive attention to ethnicity in their geographical configuration. Further, differential treatment of incumbents based on their ethnicity is apparent and openly admitted in two other districts (the 23rd and the 29th).

- **Partisan Gerrymandering** – Taken as a whole, the new plan is in totality an excessive

effort to dictate a partisan statewide outcome – with twenty-two Republican seats and ten Democratic seats. This is apparent in the characteristics of the plan and the process of its adoption, and is openly admitted by those responsible for it. The plan packs and cracks Democratic voters to maximize and lock in a Republican seat advantage, with little regard for other districting concerns, including the tradition of not replacing existing legal plans in mid-decade. This packing and cracking of Democratic voters is accompanied by a highly partisan pattern of needless pairings of incumbents and disproportionate disruption of the district population cores of Democratic incumbents. The result is a plan that is needlessly disruptive of the relationship between voters and their representatives, as well as both needlessly biased and needlessly unresponsive, as comparison to the existing plan makes abundantly clear.

Mid-Decade Redistricting

This is a most unusual congressional redistricting in that the new map, Plan 1374C, is a complete, and substantially reconfigured, replacement to an existing map, Plan 1151C, that is itself new, having been used for only one round of elections. Moreover, the existing plan is a legal one. The legality of the existing plan was challenged on Voting Rights Act grounds, but the plan was successfully defended by the state, and the state itself has not challenged the legality of the plan in court or elsewhere.

The U. S. Constitution established a ten-year interval for reapportionment of House districts among the states and subsequent redistricting within each state. While initially

this provided the opportunity for states to redraw congressional lines at ten-year intervals, it was not until the advent of active court enforcement of constitutional equal population requirements that states were actually compelled by the publication of new census counts to redraw congressional districts at ten-year intervals. The choice of a constitutionally fixed ten-year interval between reapportionments reflects a difficult tradeoff between the desire for equality of population and the desire to reduce the costs to citizens in terms of the disruption of representation inherent in reordering representational geography.

The accuracy of the population basis for both the apportionment and the new equal-sized districts drawn as a result of the apportionment begins to erode before the first elections are held. With each passing year, the existing apportionment, and the existing district lines, trend further away from equality, given the realities of shifting relative populations. In a geographically based system of representation this deterioration in representational equality must either be ignored, as it is in our Senate, or it must be periodically rebalanced, as it is for House elections. While constant readjustment is at least theoretically possible, it undermines the stability of representational relationships that is one of the salient reasons for choosing a geographic system in the first place. This distinction is clearest when we look at systems that combine geographic single-member districts with at-large representation, as is the case in many "mixed" city council election systems, or in a mixed parliament system like the German Bundestag. At-large representation tends toward highlighting broader policy concerns, while districted representation tends toward more localized and "casework" forms of representation. Even though you are represented by both your own district council member and the at-large members, you are more likely to view the district member as "your" representative. In any case, if the choice

is for fixed geographic representation with periodic readjustment, as it was for House elections, then some time interval must be chosen. There will always be tension between the representational stability of a longer period and the representational equality of a shorter period.

One could debate whether ten years was the best choice or not, but there is no debate that ten years is the tradeoff that the Framers settled on. To argue that this ten-year interval applies only to reapportionment, and not to the redistricting that it occasions, ignores the fact that most of the disruption to representation comes not from reapportionment itself, but instead from the subsequent redrawing of district lines. Moreover, this line of thinking treats the redrawing of House districts as an independent state power, rather than one that devolves from the mandated congressional responsibility to reapportion once ever decade, and the subsidiary provisions for a state role in implementing that process. Authorizing the states to set the "times, places and manner of holding elections" hardly qualifies as a reserved state power. It is followed immediately by a grant to the Congress of the power to completely override the states' authority, as Congress can "at any time by law make or alter such regulations." The fact that Congress has the complete authority to override any state government role in the selection of House members is made even clearer by the explicit note that the only exception is "as to the places of choosing Senators." Thus, a concern for federalism is simply not implicated here. The Constitution settles the national–state question by granting ultimate control over the rules of House elections to the national government. The state government role is permissive, and one might note also necessitated initially by the obvious fact that Congress can't establish these procedures for House elections until there is a House in place. The Framers chose not to specify the voluminous details of the election mechanisms in the

Constitution itself (as was done for the much simpler initial apportionment), and this necessitated a role for some other, already existing, government in getting the House election process off the ground. In that initial startup, and in all the decades that follow, the state role remains one of performing an administrative task that the Congress either initially couldn't do (because it didn't exist), or subsequently ought not to do (because of the inherent conflict of interest in self redistricting).

A state seeking to redistrict mid-decade could advance one obvious argument for why this should be allowed given the particular circumstances of the situation. The state could argue that there had not yet been any legal redistricting plan drawn for the state following the most recent reapportionment. This would normally arise if an existing plan was found to be, or could be argued to be, illegal or unconstitutional. Where an illegal plan must be replaced in mid-decade, allowing the state the first opportunity to draw the new plan *in a timely manner* imposes no necessary disruption beyond that inherent in the fact that someone must redraw the illegal existing plan. Even here, one can envision a situation in which a court might allow an existing legally flawed plan to be used for tne last election contest of a decade, rather than impose the disruption of two successive redistrictings in two years.

Where a court-drawn plan was put in place following a state default, as it was here, the only issue is whether the federal courts were implicated in the failure of the state to draw a new map. If the state was given a full opportunity to act, but chose not to do so, then it effectively relinquished its opportunity to participate in the once-a-decade implementation of the national rebalancing of popular representation. In the present case, the events leave little room for alternative interpretation. The state legislature gave

little attention or priority to redistricting in its regular session in 2001. The Texas legislature is responsible in the first session after a census for redistricting related to four separate bodies: the Texas House, the Texas Senate, the Texas State Board of Education, and the U.S. House districts within Texas. The legislature did not pass a plan for a single one of these four bodies. When the legislature adjourned without passing any plans it shifted responsibility for drawing the state House and Senate districts to the Legislative Redistricting Board. This had the effect of moving these state House and Senate maps from a divided legislature to a Legislative Redistricting Board with a four-to-one Republican majority.

The limited authority of the Legislative Redistricting Board did not allow them to draw lines for U.S. House districts or State Board of Education districts. These lines could only be drawn by the state legislature, and only the Governor could call the legislature back into special session. Gov. Perry declined to do so, though subsequent events clearly demonstrate that it is certainly possible for a governor, in this case the same Gov. Perry, to do so repeatedly if he is so inclined.

This decision by the state to cede its redistricting opportunity for both the U.S. House districts and the State Board of Education districts was not in any way coerced by the federal courts, or even occasioned by extraordinary circumstances. There was no delay in the provision of census data to the state, no policy emergency that preempted state attention to redistricting, and no other external condition that interfered with the state's opportunity to dictate the form of these district plans. In fact, the state did not even run out of time, as one might expect in a deadlock scenario where one or both sides seek to delay redistricting until it is no longer feasible. The state simply quit, and turned the process

over to the courts. Even at this stage, deference to the state continued, as a state court attempted to craft a congressional plan, while the federal court stood aside. Ultimately the state court did not succeed in this task, but it is important to remember that this was not a battle that pitted the State of Texas against the Federal Courts. The State of Texas actively opposed the final state court plan.

Thus there were two separate opportunities for the state to fashion its own congressional plan – first a state legislative process, and then a state court process. In both cases the failure to act on these opportunities reflects choices made by or within the state government, not an imposition of authority by the Federal Courts. If anything, the state encouraged and welcomed federal court action as a means to delay for two years any serious attempt at drawing a plan in the legislature.

A less recognized, but very important issue, of federalism is imbedded in the natural delay imposed by once-a-decade redistricting on the link between changes to the state legislature caused by redistricting and changes in the congressional delegation caused by its redistricting. The fact that congressional redistricting must be completed by a legislature that is itself a reflection of a previous decade's state-level redistricting maps is important. There is natural national partisan interest in state redistricting since the party advantaged in the state in the current round will be better situated to influencing congressional (national) redistricting a decade down the road. This interest is dampened, however, by the lack of immediate reward. Ten years is a very long time for politicians, party activists, and donors to plan ahead. Interest is also dampened by the uncertainty inherent in drawing lines now to influence elections that are still years away. All of this allows states to attend to their own state-level redistricting with at least some degree of insulation

from national parties, partisans, and politics. The same cannot be said if states are allowed to break the link that requires simultaneous redistricting of the state legislature and the Congress. If legislative redistricting in the year after each census begets congressional redistricting two years later, national party politics increasingly will dominate and corrupt state-legislative redistricting.

The recent experience in Texas is a stark illustration of the unintended erosion of state autonomy that will be commonplace if mid-decade redistricting is endorsed. Far from insuring that state government has an appropriate influence on national districting, it will insure only that national districting has an ever more pervasive influence on the drawing of state-legislative districts. National political parties, national fund raising, and national leaders played an unprecedented role in shaping the new maps for the Texas House and Senate. Once the maps were in place, national political parties, national fund raising, and national leaders played an unprecedented role in recruiting candidates, funding local campaigns, and attempting to shape voter opinions and turnout in state-legislative elections. All of this in an effort to mold the political landscape for congressional redistricting, and bend the redistricting will of state officeholders to the preferences of national party officials and officeholders.

Consider one telling example: Lt. Governor Ratliff, a Republican, and one of the most widely respected members of the Texas Senate, ought to have been the key player in this round of redistricting in Texas. Texas has a weak-governor form of government, and the real power in the state resides with the Lt. Governor. Early in the state redistricting process however, Gov. Ratliff abandoned his plans to run for popular election as Lt. Governor (he had been chosen by the Senate to replace Gov. Perry when Perry moved up from Lt.

Governor to Governor) in large part because he was uncomfortable with letting national party priorities compete with his sense of what was best for Texas in the redistricting process. By the end of the congressional map-drawing process, Gov. Ratliff, now back in his old role as a state senator, had quit the capital in disgust and was back home, strongly inclined to resign from state government. His successor as Lt. Governor, Lt. Gov. Dewhurst, perhaps the most gifted leader in the group of new Republicans in Austin, had proved unable to control either the redistricting process or its impact on the Texas Senate. In the end it was not Lt. Gov. Ratliff, or Lt. Gov. Dewhurst, or even Gov. Perry who brokered the deal that finally produced the new Texas congressional map. It was Congressman DeLay. An elected federal official and a leader in the national legislature came to Austin and did what the state leadership either wouldn't or couldn't do.

What this anecdote illustrates is true of this decade's Texas redistricting experience in general. The potential to redraw the congressional lines *after* reaping the political rewards of redrawing the state-legislative lines is not a safeguarding of state influence in redistricting. Quite the contrary, it in fact opens up the congressional redistricting process, and indeed even the state's own state-legislative redistricting process to what can be overwhelming national influence.

This is not the first time that an intended state power has ended up being wagged by its national tail. The original constitutional grant of power to state legislatures to select U.S. Senators led to similar problems in many states. Recall that the most famous election debates in American political history took place between two candidates for Senator in Illinois some 60 years before the advent of direct Senate elections. Why were Lincoln and Douglas touring the state

giving public speeches instead of addressing the state legislature? Because they were stumping for candidates to the state legislature, and the candidates' pledge to vote for a particular Senate candidate had become a powerful force in shaping the makeup of the state legislature, and pulled state-legislative elections directly into the national sectional issues that were diving the nation. By the time the Constitution was amended to remove from the state governments the power to select Senators, 29 states had already moved toward some modified form of popular election, in part to keep the selection of U.S. Senators from running roughshod over state issues. Mid-decade redistricting at the congressional level likewise has the potential to damage state government today.

Racial Gerrymandering

A racial gerrymander is reflected by a district configuration in which regard for traditional districting principles (such as compactness, contiguity, keeping political subdivisions whole, protecting communities of interest, and avoiding needless pairings) is subsumed by an overriding attention to race or ethnicity. This excessive attention to race or ethnicity is evident in two distinct aspects of the new map. First, several of the districts have a physical configuration that supports this conclusion. Second, the explicit focus on the race or ethnicity of incumbents in some districts also provides evidence of this excessive attention.

Ethnicity and the Physical Configuration of Districts

Three districts, the 15th, 25th, and 28th, in the new plan (throughout the discussion below reference to the "new plan" is to Plan 1374C, and reference to the "existing plan" is to 1151C, as documented by the Texas Legislative Council) stand out as racial gerrymanders. All are Hispanic majority districts running in narrow north/south strips from the lower Rio Grande area up into central Texas. These three districts

are anchored to the south in territory that, in the existing map, is largely in Districts 15 and 28. To get three Hispanic districts out of two existing districts, the three new districts had to be thin and long, and hence push much further north, and some new Hispanic population had to be included from the northern reaches as well.

The two most widely used measures of district compactness, and the two that are provided to redistricters in Texas by the Texas Legislative Council to help them in assessing compactness when they are comparing potential plans, are "smallest circumscribing circle" and "perimeter to area ratio." The "smallest circumscribing circle" score measures non-compactness in the stretched out sense. Long, narrow districts get high (worse) scores on this measure, while districts that are closer to a circle in shape (the most compact form) get lower (better) scores. The "perimeter to area" ratio measures non-compactness is the sense of how irregular the boundaries of a district are, regardless of how stretched out or bunched together a district might be. Districts with jagged irregular boundary lines get high (worse) scores on this measure, while districts with smooth, regular outlines get lower (better) scores. For either measure, a perfect score (for a smooth, circular district) would be 1.0. In addition to these numerical indications, a visual examination of the shape of the district is helpful, and "silhouette" maps of the 15th, 25th, 28th, and 29th districts (Maps 1, 2, 3, and 4 respectively) have been attached to facilitate this.

District 25 has the worst "smallest circle" compactness measure in Plan 1374C at 8.5, a value substantially higher than the worst smallest circle measure in the existing plan (of 5.0 for District 15). The "perimeter to area" compactness measure for District 25 is also high at 9.6, ranking it 30th out of the 32 districts on this measure (or third

worst). Most (77%) of the total population and most (78%) of the minority population of the district are located at the two extremes of the district, with the narrow, lightly populated territory serving largely to provide a physical connection for a concentration of Hispanic population in Travis County at the northern end of the district and a concentration of Hispanic population in Hidalgo and Starr Counties at the southern end (see the density shading by block group in attached Map 5 for a visual illustration). Nor is it clear that these geographically distinct Hispanic population clusters share any genuine community of interest beyond the definitional fact that both areas are predominantly Hispanic. In addition, the boundaries of the district in Travis County exhibit clear attention to Hispanic concentration over other districting concerns. Compare the relationship of the boundaries of the district within Travis County to the Hispanic and Democratic population concentrations shown in Maps 6 and 7, respectively, for Travis County. This report uses maps showing Hispanic VAP percentages (*e.g.*, Map 6 of Travis County) and maps showing Democratic performance (*e.g.*, Map 7 of Travis County), as measured by the 2002 lieutenant gubernatorial contest; together, they allow a viewer to compare whether congressional district lines more closely correspond with partisanship or with ethnicity. Here, the disparate attention to ethnicity is apparent. Taken together these characteristics – low compactness overall, compact but widely separated and geographically distinct clusters of minority population, long relatively unpopulated connecting territory, and excessive attention to minority population when splitting political subdivisions, are clearly indicative of a district where traditional districting concerns have been supplanted by race or ethnicity as the driving force in district creation.

District 28 ranks 29th out of 32 on the "smallest circle" compactness measure in Plan 1374C at 5.0, a value

that equals the worst smallest circle measure in the existing plan of 5.0 for District 15. The "perimeter to area" compactness measure for District 28 is better at 5.7, ranking it 14th out of the 32 districts on this measure. Much (59%) of the total population and most (71%) of the minority population of the district are located in two separate split counties in the district, Webb to the south and Bexar to the north (see the density shading by block group in attached Map 8 for a visual illustration, and Maps 9 and 10 for details of partisan and ethnic concentrations in Bexar County). In addition, the boundaries of the district where it splits Hays County and Comal County exhibit clear attention to Hispanic concentration over other districting concerns. The district includes only 18 percent of the population of Comal County, but gets 45 percent of the minority population. Similarly, the district includes 59 percent of the population of Hays County, but captures 85 percent of the minority population.

District 15 ranks 31st out of 32 on the "smallest circle" compactness measure in plan 1374C at 6.5, a value that exceeds the worst smallest circle measure in the existing plan of 5.0, also for District 15. The "perimeter to area" compactness measure for District 15 is the worst in the entire plan at 11.6, compared to 8.5 for the existing District 15. Much (63%) of the total population and most (75%) of the minority population of the district are located in two separate split counties (Hidalgo and Cameron) at the southern extreme of the district (see the density shading by block group in attached Map 11 for a visual illustration). The remainder of the eleven-county meander up into central Texas is largely filler population needed to bring the district up to ideal total population (see statewide Maps 12 and 13 for illustration).

All of this ethnicity-based districting is related to the decision to shore-up the re-election prospects of Republican Congressman Henry Bonilla at the cost of weakening the

power of Hispanic voters in the 23rd District. This is accomplished by adding to District 23 the overwhelmingly Anglo and Republican Hill Country population of Kerr, Kendall, and Bandera Counties, while excluding half of the city of Laredo in Webb County. Kerr, Kendall, and Bandera Counties are 76.2 percent Anglo and have a statewide Republican index of 79.2 percent; in 2002, only 10.9 percent of the registered voters in these counties had Spanish surnames. By contrast, the population that is removed from the 23rd District in Webb County is 96.1 percent Hispanic (and 90.9 percent of the registered voters in 2002 had Spanish surnames). This population trade shifts majority status in the 23rd District from Hispanics and Democratic voters, to Anglos and Republican voters. But it still leaves over 370,000 Hispanic persons in the new 23rd District. In effect, the designers of Plan 1374C tried to show the same number of Hispanic opportunity districts as previously existed in Texas, while not utilizing all or part of 9 of the 13 counties that border Mexico, along with over 370,000 Hispanics, from the Border region that is key to all but one of the majority Hispanic districts in Texas. Their decision to do so in order to protect Congressman Bonilla was what led directly to the very apparent racial gerrymandering in the new 15th, 25th, and 28th Districts, in which every remaining available Hispanic had to be captured.

The 29th district also raises concerns in the new plan. The Hispanic population in the district is increased over its levels in the existing plan, with the percent Hispanic in the overall population rising from 62.2 percent to 66.1 percent, and the Hispanic share of the registered voters increasing from 42.5 percent to 45.9 percent. This increase is accomplished at the expense of reducing the compactness of the district, both in the numerical measures (the "smallest circle" compactness measure increases from 7.7 to 8.6 and the "perimeter to area" compactness measure increases from

2.8 to 3.1) and in the visual appearance of the district (see silhouette Map 4 as well as Maps 14, 15, and 16 for illustration). This reverses the trend in this district toward less attention to ethnicity in light of past court decisions and as the Hispanic population of the Houston area has increased. The justification for this renewed emphasis in ethnicity is apparently a misplaced concern for the ethnicity of the incumbent Congressman, Gene Green, as discussed in more detail below. There is also an increase in the minority population in the 30th district under the new plan, with the Black citizen voting-age population moving above 50 percent (from 48.6 percent in the existing plan to 50.6 percent in the new plan). Given the demonstrated history of effective minority representation in the district, it is not clear why it would need to have more minority population at this point.

Improper Emphasis on Race and Ethnicity of Representatives

Several other features of the newly adopted plan also raise the issue of an inappropriate level of attention to race and/or ethnicity. The focus on the race or ethnicity of *incumbent representatives* is apparent and openly admitted by the state. But this is clearly not a matter on which the State should be attempting to impose its will through the redistricting process. The treatment of District 23 and its incumbent representative Henry Bonilla, and the distinctly different treatment of District 29 and its incumbent representative Gene Green, clearly illustrate this. District 29 is a district with an estimated Hispanic citizen VAP of 42.8 percent and a combined Black plus Hispanic citizen VAP of 63.2 percent in the existing plan. Gene Green has a long history of election as the candidate of choice of Hispanic voters in the 29th district. According to the State's explanation to the Justice Department in support of its request for pre-clearance of 1374C (attached as Appendix B), the new plan intentionally drew Congressman Green out of

his district, and increased the Hispanic VAP of the district to 46.9 percent. This was done as part of an effort in Plan 1374C to increase the number of districts "where minorities have an opportunity to elect one of their own" (page 12). In other words, the state did not treat District 29 as a minority district because it elected an Anglo candidate. It sought to take credit for creation of a new minority district just by drawing Mr. Green out of the district.

In contrast, current District 23 is treated by the State to be a protected minority district with an estimated Hispanic citizen VAP of 57.5 percent and a combined Black plus Hispanic citizen VAP of 59.4 percent in the existing plan. The incumbent, Congressman Bonilla, is Hispanic, but is not the candidate of choice of the majority of Hispanic voters in the district. Despite this fact, district 23 is listed by the State as one of the eight districts in the existing plan that "are currently electing candidates that can be legitimately described as candidates of the minority communities' choice" (page 9). (Note that District 29 is not among those eight districts according to the State's definition of the appropriate Section 5 baseline.) It is apparent that Congressman Bonilla and District 23 make the cut for this list in large part because Congressman Bonilla is Hispanic, and that Congressman Green and District 29 are not on the list because Congressman Green is not Hispanic. The fact that the citizen minority population in District 23 is reduced below 50 percent in 1374C is excused by the fact that the new district will presumably re-elect Congressman Bonilla (the reduction in minority population is accompanied by an increase in the statewide Republican index) and thus all of the "current Hispanic incumbents are likely to be reelected under this plan" (page 13).

Thus both of these existing Hispanic districts are treated in ways that are highly unusual for protected minority

districts. In both cases the ethnicity of the incumbent is offered as the rationale for this treatment. District 23 is the most precarious of the state's Hispanic districts given its nearly even partisan split, but instead of shoring it up, the new plan intentionally weakens the district. The explanation for hurting the district is that it helps the incumbent, and since he happens to be Hispanic, that makes it all right. District 29 has always elected Gene Green, who is the Hispanic candidate of choice, but he is moved to a new district with only 1.1% of his current constituency in it. The explanation for hurting the incumbent is that it helps the district, but only because the incumbent happens to be an Anglo.

What is clear is that the proper focus on the voters has been supplemented in this plan with a direct focus on the race and ethnicity of the representatives. The race and ethnicity of candidates is often an important, useful, appropriate focus in an assessment of cohesion and polarization for Voting Rights Act purposes. But nothing in the analytical use of candidate race or ethnicity justifies attempts to *control* the race or ethnicity of representatives through the redistricting process.

Partisan Gerrymandering

Partisan gerrymandering is an attempt to control the partisan results of elections held under a given plan, just as racial gerrymandering is an attempt to control the racial results of elections by altering features of a given plan. As with racial gerrymandering, a key concern is the degree to which partisan concerns override other traditional districting concerns. Several techniques are common, and two techniques that relate to existing incumbents are differential pairings that disadvantage one party to the benefit of the other, and differential disruptions of existing district constituencies (also called "core retention") that disadvantage

one party to the benefit of the other. More broadly, the degree to which one party's voters have been "packed" into some districts and "cracked" among other districts can dramatically shift the degree to which a map fairly translates changes in the wishes of voters into changes in the outcomes of elections. Each of these will be addressed in turn below. Note that while there are clear similarities in racial and partisan gerrymandering, there is also a key distinction. Racial gerrymanders focus at the district level, and evidence of them is largely at that level. Partisan gerrymanders are a characteristic of the configuration of districts in the whole state plan, and are largely examined at that level.

Partisan Bias

Partisan bias is created by disparately "packing" and "cracking" adherents of one of the parties. The extent and nature of partisan bias in the new plan can be assessed by examining the pattern of statewide election results within the voting precincts that make up each of the new districts. This "reconstituted" election analysis can show, for example, that in a statewide race where the two parties' candidates run evenly, one would likely carry 22 districts and the other 10. That would be a result of disparate "packing" and "cracking."

An analysis based on statewide elections is the same form of partisan analysis that the Texas Legislative Council provides to map drawers to assist them in gauging the partisan consequences of various alternative plans. The typical TLC report averages together all of the statewide elections in a given year to provide a summary "statewide index" for that election year.[1] While this is a useful summary

[1] The use of reconstituted statewide election results to compare various redistricting plans is commonplace. The utility of using these elections rests in part on the fact that the quality of the match between the statewide averages and the actual congressional election results is typically quite high. A check of the match here reveals much the same

indicator, it sacrifices variation across contests in favor of parsimony.

The analysis here extends this same approach in several ways - primarily by disaggregating the statewide contests in a given year and assessing the plan under each contest individually. This yields a substantial increase in the variety of actual election patterns that are available. Variations in such factors as candidate quality, race and ethnicity, funding, and regional basis of support are all represented in increasing numbers as the number of individual elections increases. Here, by using all of the statewide contests in 1992, 1994, 1996, 1998, 2000, and 2002 the total number of individual reconstituted elections is 64, a very substantial number. This is also one more election cycle than we would typically have available, as the 2002 elections from the new decade are included.

For both the existing plan and the new plan, each of the 64 statewide contests is re-aggregated from the VTD (geographic precinct) level up to the congressional district level. For each election this yields 32 sub-state results, one for each congressional district. The mean statewide Republican share of the vote can then be calculated by

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result as has been found elsewhere. Using VTD (precinct) level data we can assess the degree of association between the statewide average Republican vote share and the actual Republican vote share in the contested 2002 congressional elections. The standard methodology here is a simple OLS regression analysis with incumbency added as a control. The resulting precinct level correlation between the average statewide Republican vote share and the actual congressional Republican vote share is extremely high, whether we look at the average for just the 2002 statewide elections ($r=.96$, $R^2=.91$), or the broaden the analysis to include the 42 statewide elections between 1996 and 2002 ($r=.95$, $R^2=.90$). These results also provide an estimate of incumbency advantage that shows a 10.5 percentage point boost for the party of the incumbent where the incumbent is seeking re-election.

averaging the Republican share of the two-party vote across the 32 districts. Finally, each individual district result can then be characterized by whether it is more Republican than the statewide average for that contest (indicating a pro-Republican tilt in that district) or less Republican than the statewide average for that contest (indicating a pro-Democratic tilt in that district).

For example, in the 2000 Bush-Gore presidential contest, the average two-party vote for Bush across the 32 congressional districts in the existing plan was 58.9 percent. In Plan 1374C's 31st District, Bush received 71.6 percent of the major-party vote, running well ahead of the statewide district average, and indicating a district that tilts more Republican than the average district in the state. Contrast that result with the 30th District, where Bush got only 30.9 percent of the vote. Here, Bush is clearly running well behind the statewide district average, indicating a district that tilts more Democratic than the average district in the state.

Note also that any district that has a result more favorable than average to the Republican candidate is a district that the Republican would carry even in a 50/50 or "dead heat" election. We can *adjust* all the precinct results downward for Bush sufficiently to turn an actual 58.9 percent average district result into a 50.0 percent dead heat. This procedure, often referred to as "normalizing" the results to "50-50," allows us to gauge how a plan would tilt in an even partisan split, even though the actual elections themselves were not even splits. This allows us a measure of partisan bias by indicating the degree to which a map, through differential packing and cracking of partisans voters, allows one party to win a majority of the seats even though they have no advantage in the average vote share. As noted below, partisan bias should not be confused with the natural tendency in most geographic districting plans to over-reward

the victor in an election by giving a disproportionately large share of the seats for a given share of the vote above 50 percent. In most geographic plans 55 percent of the vote will yield more than 55 percent of the seats to whichever party wins that majority. This tendency to over-reward the winning party is related to the responsiveness of a plan to vote shifts, and can be neutral in that it offers the same bonus to any party that happens to win. This is separate and distinct from whether the plan tends to durably produce a victory in seats for one of the two parties, when the average vote share is 50-50. To be neutral in this sense, a plan need not always yield a 50-50 seat split for a 50-50 average vote split, but it should yield roughly as many pro-Democratic results as pro-Republican results.

Table 1 summarizes the results of this sort of election analysis for both the existing plan (1151C) and the new plan (1374C). The table reports the breakdown of the 64 statewide contests according to the relative Republican/Democratic share of seats that the election voting would have produced if it was normalized to a 50-50 contest (i.e. the relative number of districts that are more or less Republican than the statewide district average). Under the existing plan, the results vary across the 64 elections from two elections that yield a 13R-19D split, to two contests that produce a 20R-12D split. Remember that these are not the party splits in terms of which party actually carried each district, but instead the results in terms of how many seats the parties would have carried even if the votes were adjusted to a 50-50 statewide average in the contest. Overall, the existing plan exhibits a pro-Republican tilt. Seven elections fall on an even 16R-16D split, and 13 elections show splits that favor the Democrats, compared to 44 elections that show pro-Republican splits. This is also reflected in the mean, the median and the mode, all suggesting that the plan centers on a 17R-15D split at a 50-50 statewide average vote split.

The results for the new plan are substantially different than those for the existing plan. In fact, every single one of the 64 elections produced an outcome that gave the Republicans a seat advantage in an even (normalized to 50-50) contest. Fifty of the 64 contests exhibit a 21R-11D or 22R-10D split at 50-50, a level of pro-Republican tilt that the existing plan never reaches in even a single contest. These results under the new plan center on a 22R-10D split, with both the median and the mode falling there; the mean of 21.1 falls closer to a 21R-11D split.

Tables 2, 3, and 4 break the 64 statewide election contests down by years into three on-year/off-year pairs (2000-2002, 1996-1998, and 1992-1994). This allows us to see if the results in Table 1 are unique to one time period, and to see if the most current elections suggest any important trends in bias. As we can see from Table 2, the 20 most recent elections (2000-2002) exhibit the same overall pattern as in Table 1, with both plans favoring Republicans, but with the pro-Republican bias most extreme in the new map. The degree of bias in the existing map (1151C) is however notably higher in this most recent set of elections (centering on 19R-13D), but even the most biased outcome under the existing map (20R-12D) falls below the least biased outcome (21R-11D) under the new map. Table 3 shows much the same pattern for the 1996 and 1998 contests, though here we can see that the bias for the existing plan is now more moderate (centered on 17R-15D) and in line with what it was for the full set of 64 elections. Table 4 takes us the furthest away in time from the current concern (ten years separate the 1994 election from the upcoming 2004 elections that would be the first under the new plan). Here the pattern is notably different for the existing plan. For the 22 statewide elections in 1992 and 1994 the existing map actually tilts modestly pro-Democratic, centering on a 15R-17D split, and with only seven of the 22 elections showing a pro-Republican split.

The sharp contrast with the new map, however, persists even here. All 22 of the elections exhibit a pro-Republican split, and the plan centers on a 20R-12D or 21R-11D split. Overall, if there is trend in the partisan bias as we move closer to 2004, it clearly favors pro-Republican seat splits.

The contrast between the plans can be summarized in two characteristics. First, the new plan has a much higher bias in favor of Republicans, with 4 or 5 more Republican seats and 4 or 5 fewer Democratic seats, even in an election where the average voter split is even. Second, the variation in possible results across different contests is much lower in the new plan. Compare the seat splits in the most recent elections (Table 2, 2000-2002) to the seat splits in the most distant elections (Table 4, 1992-1994). For the existing plan the contrast is striking and substantively meaningful. For the new plan the only difference is a small change in how pro-Republican the bias is. Thus the new plan is not only significantly *more* biased in favor of Republicans, but also much more *dependably* biased. As we can see from the 1992-94 results, in at least some election scenarios represented in the 64 contests, the existing plan produces something other than a solidly pro-Republican seat split for a 50-50 average vote split. The new plan never produces an even seat split in a single contest, despite normalizing the vote to an even average split.

This comparison between the pattern of bias and responsiveness in the two plans can also be presented visually. Chart 1 presents the information in Table 1 in bar chart form. Here again, the distinct between the two plans is stark. At a 50-50 vote split, the plan shifts the results substantially toward the Republican end of the chart, while simultaneous concentrating most of the results in a single biased outcome (22R-10D). In contrast, the existing plan is both less biased and more varied. This same pattern can be

seen more broadly by using the same sort of bar chart, but looking at the seat patterns across the 64 elections without normalizing the results. That is, we are looking simply at the number of districts carried by the Republican statewide candidate in each of the 64 elections, no matter how lopsided that statewide contest may have been. Chart 2 presents these un-adjusted results, and if anything the pattern is starker than was the case for the '50-50' results in Chart 1. As we would expect given the general Republican advantage in statewide elections over this period (the mean and median is 54 percent Republican for the two-party vote share in the 64 statewide elections), the existing plan centers around a pro-Republican split, at 20R-12D. While centered at 20R-12D, the existing plan nonetheless shows that the pattern of seat results can vary substantially across different elections, and in fact less than one-quarter (15 of 64) of the seat splits fall at 20R-12D. In contrast, the new plan is overwhelmingly a 22R-10D plan. More than two-thirds (43 of 64) of the results are in this one category, and no other seat split appears more than two times.

The relative bias and responsiveness of the new plan can also be seen clearly in a visual comparison of the relationship between the actual average vote share for Republicans in each of the 64 statewide elections from 1992 to 2002 and the share of the seats under the existing and new plans that the Republican statewide candidate carried in those same 64 elections. Graph 1 presents this data for the existing plan (1151C) and Graph 2 presents the same election data for the new plan (1374C). The existing plan shows a fairly responsive and relatively unbiased election pattern. When the average Republican vote share is above 50 but below 55 percent, the Republican seat share falls between 53 percent (17R-15D) and 69 percent (22R-10D) of the seats. When the average Democratic vote is above 50 but below 55 percent, the Democratic seat share falls between 47 percent (17R-15D) and 66 percent (11R-21D) of the seats. Across the

entire range of election outcomes, shifts in vote share generate some degree of shift in seat share. This is in contrast to the pattern in the new plan (1374C) in Graph 2. Here, when the average Republican vote share is above 50 but below 55 percent, the Republican seat share never varies from its locked-in 69 percent (22R-10D) of the seats in even one of the 28 elections in this range. Indeed, even in the higher vote range between 55 and 60 percent of the vote, 15 of the 19 elections exhibit the same 22R-10D pattern. In contrast, when the average Democratic vote share is above 50 but below 55 percent, the Democratic seat share varies widely between 31 percent (22R-10D) and 66 percent (11R-21D) of the seats. Within that range of outcome, five of the nine elections generate seat splits actually favoring the Republicans, who carried between 19 and 22 seats despite losing the vote statewide. The most apparent difference between the picture for the existing plan in Graph 1 and the new plan in Graph 2 is the long flat section in which the new plan exhibits very little response to shifts in voter sentiments. In the 48 elections that fall between 48 percent Republican and 58 percent Republican, 42 produce the exact same 22R-10D seat share, and none shows less than 19 Republican seats. In short, the new plan does not pay for its apparent partisan bias in increased responsiveness; it is instead both clearly biased and *less* responsive.

The relatively modest pro-Republican bias in the existing plan also demonstrates that the much more extreme bias in the new plan is not simply a natural outgrowth of the way in which partisan voters are distributed across the geography of the state. If this were true, then we would see a similar degree of bias in both plans. Nor does the existing plan distort district outlines to achieve this reduction in bias – again, what you would expect if the natural distribution of partisans favored one party. The existing plan's districts are in fact actually measurably more compact than the new

plan's districts. It is also important to distinguish the bias in the new plan from the natural tendency mentioned above for most geographic districting plans to over-reward the victor in an election. Most plans offer an exaggerated reward in terms of the gain in the percentage of seats as the winning party moves up above 50 percent of the vote. In modern U.S. House elections for example, gains of one percentage point in average vote share typically yield gains of about two percentage points in average seat share. Applying this to Texas we would expect an increase in vote share of five points, moving from 50 percent of the vote to 55 percent of the vote, to yield a seat increase of ten percentage points, moving you from 50 percent to 60 percent of the seats (i.e. from 16 to 19 seats). Here, the new plan is not simply exhibiting this natural tendency to over-reward victors. It builds in a dramatic over-reward even at an average 50-50 vote split.

Treatment of Incumbents

Nothing in this re-redistricting requires pairings. There is no decrease in the number of seats, no known shift in the population distribution, and no increase in required Voting Rights Act districts. Pairings in the new plan are entirely a matter of choice – and the nature of the actual pairings is highly partisan and one-sided.

The new District 2 in Plan 1374C pairs two incumbent Democrats, Congressman Green and Congressman Lampson, in a district that has a 60.6 percent Republican statewide index for 2002, according to the TLC. The new district includes only 1.1 percent of Congressman Green's current 29th District population and slightly less than half of Congressman Lampson's current 9th District population.

Three incumbents are "triple paired" in the new District 6, two Democrats, Congressman Frost and

Congressman Turner, and one Republican, Congressman Barton. The 6th is Congressman Barton's current district, and it includes 66.4 percent of his old constituency in a new district that has a 64.1% Republican statewide index. Congressman Frost's old district (the 24th) contributes only 21.6% of its population to the new 6th District (and that included portion of the old 24th has a Republican statewide index of 59.1 percent, even though it comes out of an existing district with a 60.6 percent Democratic statewide index). Congressman Turner's old district (the 2nd) contributes only 4.4% to the new 6th District, a fact that's not surprising given the highly dissimilar geography.

One Democrat, Congressman Bell, and one Republican, Congressman Culberson, are paired in the new 7th District (with a Republican statewide index of 70.2%). Bell's old district (the 25th) contributes only 18.8% of its population to the new 7th District, and this included portion of the existing 25th has a Republican statewide index of 63.7 percent, even though it comes out of an existing 25th district with a Democratic statewide index of 51.5%. In contrast, Culberson stays in his existing 7th District and its new configuration retains 51.8% of the existing 7th District population and is, as noted above, overwhelmingly Republican.

The new 19th District pairs Democratic Representative Stenholm with Republican Representative Neugebauer in a rather bizarre new District with a Republican statewide index of 69.0%. Stenholm's existing 17th District contributes only 30.9% of the population of the new 19th District, while Neugebauer's existing 19th District contributes 57.5%.

The four remaining unpaired Anglo Democrats do not escape unscathed. Representative Sandlin remains in the first district, but 59.9% of the population in this reconfigured 1st

District is from outside of the existing District and the new District is 5 points more Republican than the existing 1st District. Congressman Hall remains in the 4th District but 66.1% of the district population is new.

Congressman Doggett remains in the 10th District, but it is radically reconfigured. The existing 10th is an East Austin District wholly in Travis County. The new 10th District takes its inspiration from the existing 31st District, but where the existing 31st stayed north of Travis County in Williamson County, the new 10th District drops Williamson County (to craft a new 31st anchored in Williamson and Bell Counties that is secure for incumbent Republican Congressman Carter), and swaps its population for suburban northeast Travis County and at the other end of the district dips deeper into suburban northwestern Harris County, with almost as much population in Harris County as in Travis County.[2] Congressman Edwards is shifted from the current 11th District, with a Republican statewide index of 62.8% to the new 17th District with a Republican statewide index of 64.0%. Only 35.2% of Congressman Edward's existing 11th District population follows him into the new 17th District.

In short, whether by pairings or by district submergence, every Anglo Democratic incumbent is clearly targeted by this re-drafting of the Texas congressional map. Not a single Anglo Democratic incumbent lives in a district that retains 50% or more of his current constituency.

The Texas Legislative Council district-overlap analysis allows for a summary assessment of "core retention" by simply looking at the proportion of an incumbent's

---

2 The fracturing of Travis County was controversial. The chairman of the Travis County Republican Party said: "I don't care if Austin is divided eight ways as long as Doggett is gone." (Austin-American Statesman, June 29, 2003.)

existing district population that remains with the incumbent in the new map. The average proportion of population retained in the new plan for the 15 Republican incumbents is 61%, while the average population retained for the 17 Democratic incumbents is 47%. This clearly shows the bias and disruption of Democratic incumbent districts, but it also understates this bias considerably. Many of the Democratic incumbents represent protected minority districts, where Voting Rights Act considerations limit the extent of potential disruption. If we look only at the Anglo Democratic incumbents, the average proportion of population retained by the incumbent drops to 27%. Only 1 Republican incumbent, Congressman Bonilla, lives in a protected minority district under Plan 1151C, and if we exclude that district, the average population retained for the remaining 14 Republican incumbents is still 60%.

Conclusion

Several central concerns are important here, as they have been in other redistricting disputes. First, redistricting is not simply a weapon to be freely used to advance any party, political, policy, or personal interest. Redistricting is an essential, albeit disruptive, maintenance task for the sort of the single-member geographic representation scheme that characterizes most U.S. legislative bodies. And what is being maintained is nothing less than the central linkage of democratic governance. Where a central feature of representation provides an opportunity for manipulation, pressure to exploit that opening will always be present. The system must have some credible set of constraints on that pressure to preserve its integrity, and to sustain public confidence. This basic notion informs much of the effort to limit the range of redistricting choice in areas like malapportionment, vote dilution, and racial gerrymandering. Second, a related reality is that legislatures are often too

much a part and a product of the abuses of redistricting to have any realistic ability to reign themselves in once they have jumped the traces. Third, abuses at the heart of representation weaken the legislature itself.

Partisan gerrymandering, and the mid-decade redistricting that is the next logical step in its rapid escalation, illustrate all three of these central themes. What could better illustrate that partisan pressure on redistricting has moved beyond its past constraints, than a redistricting without a reapportionment that is defended by its proponents as being solely about gaining seats for their party? Redistricting in this guise is truly a democratic plow-share being beaten into a partisan sword. The openness with which this is being done suggests that participants rightly understand that there will be no successful legislative response. As was the case with the malapportioned U.S. House of the 1960, the deeply divided, fiercely partisan, and highly unresponsive current House is far too much a product of this abuse to be able to end it. Absent such a response, further escalation is inevitable. As manipulated redistricting ratchets down electoral responsiveness, the political effort inevitably will shift to winning redistricting instead of trying to win elections in the ever dwindling pool of competitive seats. In turn, this of course leads to a further ratcheting down of competitive seats, and the process spirals further out of control. The earlier discussion of Congressman DeLay's role in the Texas redistricting reflects this key reality. It is easy to see today's Republican partisan gerrymander as revenge for yesterday's Democratic gerrymander, or a gerrymander in Texas as revenge for a gerrymander in Georgia. But the larger and more sobering truth is that this is not simply hot-headed political payback. With each additional gerrymander, the options for responding with anything but another gerrymander diminish, and we are rapidly reaching the point where national politicians who

believe in what their party wants to achieve will have no option but to build their legislative strength with the only tool left that can shift seats in the locked-down environment that partisan gerrymandering itself helped to construct.

The fact that partisan gerrymandering has moved from simple revenge to the only game in town is clear in the Texas case. Despite the public spin that the new plan is merely an attempt to "un-do" a Democratic partisan gerrymander, no one with any redistricting experience believes this. The existing plan is simply not a partisan gerrymander in even the broadest possible sense of the term. In contrast, the new plan is, and was crafted to be, a very effective partisan gerrymander. From a national perspective, the option to leave alone states that have neutral plans, and just focus on reversing existing partisan gerrymanders, is increasingly unrealistic. The mid-decade redrawing of the map in Texas is just the leading edge. States that have tried to tame the redistricting process unilaterally by moving to non-partisan commissions will be next. If either party sees the opportunity to gain seats by moving a state legislature back into the redistricting business, the pressure to do so will be enormous. For national Democrats and Republicans alike, there are no longer any innocent neutrals in this battle. If a state is not part of the solution, it is part of the problem, and it will be dragged into gerrymandering kicking and screaming if need be.

Dated: November 14, 2003

/s/

John R. Alford

Table 1

All 64 Statewide Elections from 1992 to 2002				
Number of Seats More Republican than the Mean Statewide Vote and the Number of Seats More Democratic than the Mean Statewide Vote				
Republican-Democratic Seats in a given election out of 32	How many of the 64 elections show this pattern of Seats			
	1151C		1374C	
Seats	Number	%	Number	%
10R-22D				
11R-21D				
12R-20D				
13R-19D	2	3.1%		
14R-18D	4	6.2%		
15R-17D	7	11.0%		
16R-16D	7	11.0%		
17R-15D	22	34.4%	3	4.7%
18R-14D	7	11.0%	5	7.8%
19R-13D	13	20.3%	1	1.6%
20R-12D	2	3.1%	5	7.8%
21R-11D			12	18.8%
22R-10D			38	59.4%
Mean	17.0		21.1	
Median	17		22	
Mode	17		22	

Table 2

The 20 Statewide Elections from 2000 to 2002				
Number of Seats More Republican than the Mean Statewide Vote and the Number of Seats More Democratic than the Mean Statewide Vote				
Republican-Democratic Seats in a given election out of 32	How many of the 20 elections show this pattern of Seats			
	1151C		**1374C**	
Seats	Number	%	Number	%
10R-22D				
11R-21D				
12R-20D				
13R-19D				
14R-18D				
15R-17D				
16R-16D				
17R-15D	2	10.0%		
18R-14D	5	25.0%		
19R-13D	12	60.0%		
20R-12D	1	5.0%		
21R-11D			3	15.0%
22R-10D			17	85.0%
Mean	18.6		21.8	
Median	19		22	
Mode	19		22	

Table 3

The 22 Statewide Elections from 1996 to 1998				
Number of Seats More Republican than the Mean Statewide Vote and the Number of Seats More Democratic than the Mean Statewide Vote				
Republican-Democratic Seats in a given election out of 32	How many of the 22 elections show this pattern of Seats			
	1151C		**1374C**	
Seats	Number	%	Number	%
10R-22D				
11R-21D				
12R-20D				
13R-19D				
14R-18D				
15R-17D				
16R-16D	5	22.7%		
17R-15D	15	68.2%		
18R-14D	1	4.5%	1	4.5%
19R-13D	1	4.5%		
20R-12D				
21R-11D			3	13.6%
22R-10D			18	81.8%
Mean	16.9		21.7	
Median	17		22	
Mode	17		22	

Table 4

The 22 Statewide Elections from 1992 to 1994				
Number of Seats More Republican than the Mean Statewide Vote and the Number of Seats More Democratic than the Mean Statewide Vote				
Republican-Democratic Seats in a given election out of 32	How many of the 22 elections show this pattern of Seats			
	1151C		**1374C**	
Seats	Number	%	Number	%
10R-22D				
11R-21D				
12R-20D				
13R-19D	2	9.1%		
14R-18D	4	18.2%		
15R-17D	7	31.8%		
16R-16D	2	9.1%		
17R-15D	5	22.7%	3	13.6%
18R-14D	1	4.5%	4	18.2%
19R-13D			1	4.5%
20R-12D	1	4.5%	5	22.7%
21R-11D			6	27.3%
22R-10D			3	13.6%
Mean	15.5		19.7	
Median	15		20	
Mode	15		21	

Chart 1

Number of Seats More Republican than the Statewide Mean in 64 Elections
(Republican Seats at 50-50 Vote Split)
from 1992 to 2002
Comparison of Plans 1151C and 1374C

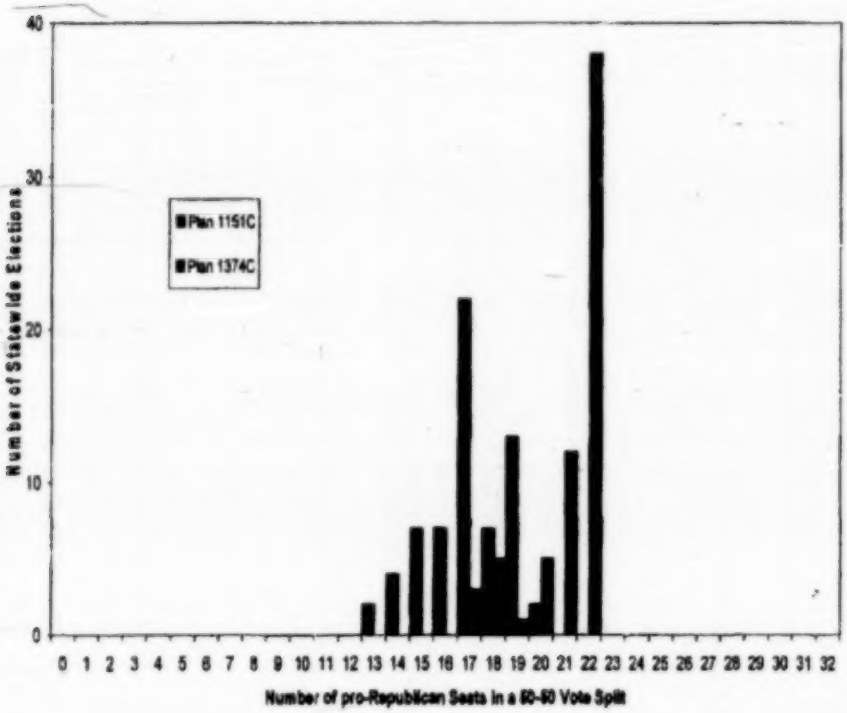
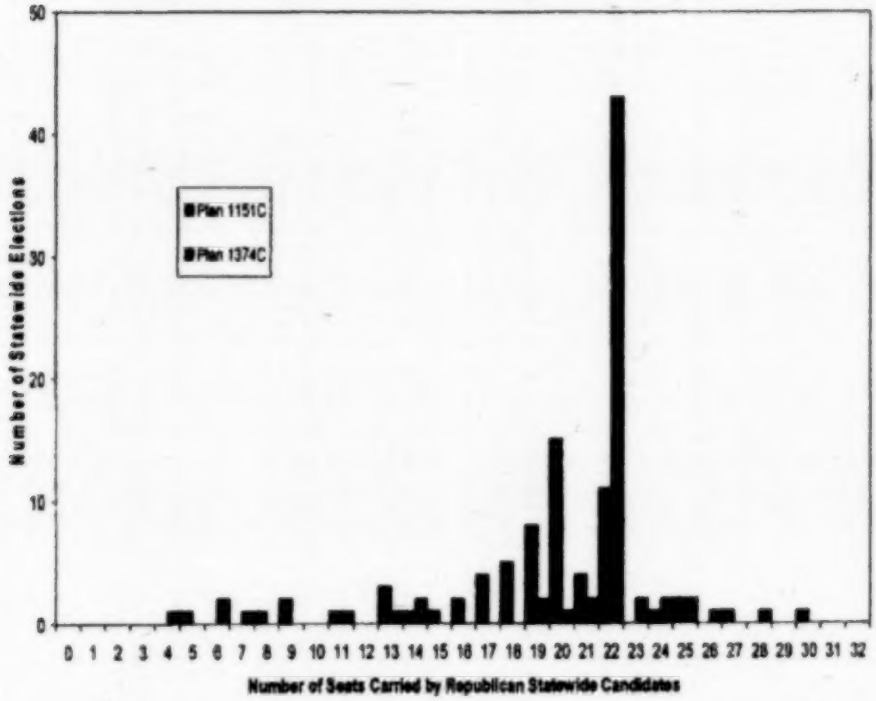


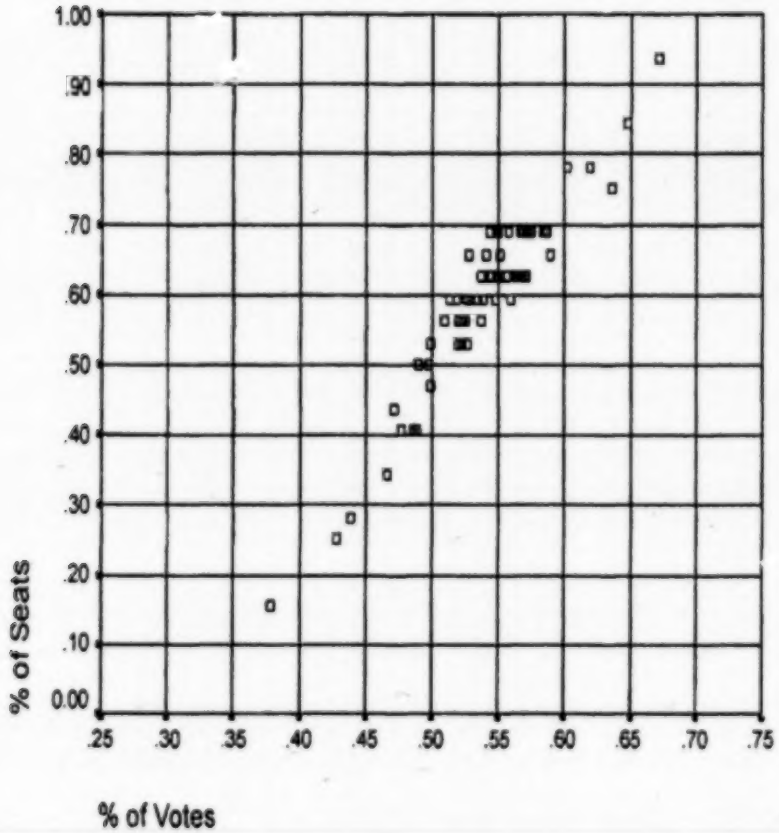
Chart 2

Number of Seats Carried by Republican Candidates in 64 Statewide Elections from 1992 to 2002
Comparison of Plans 1151C and 1374C



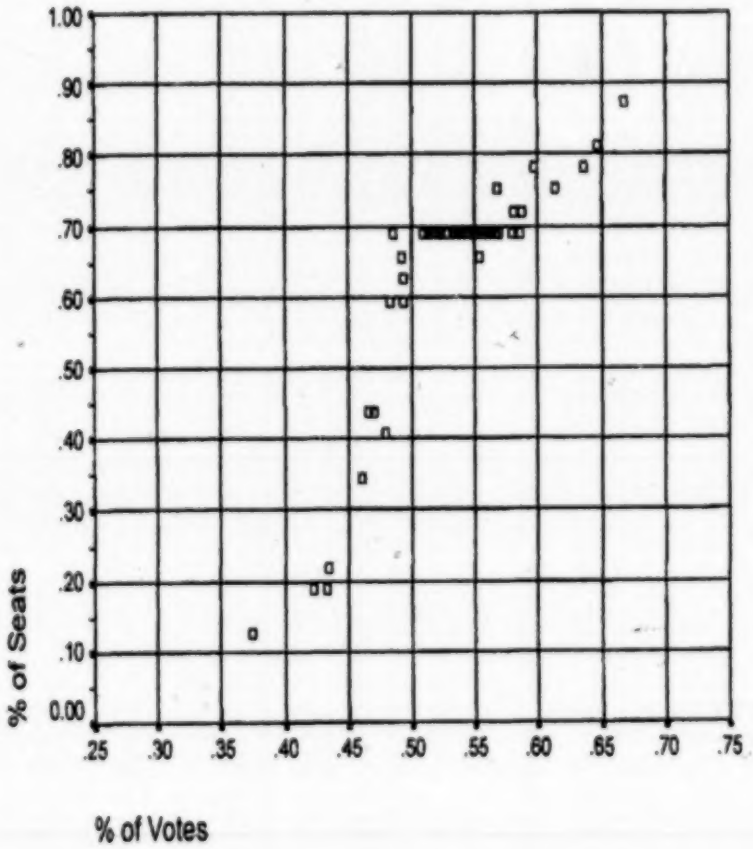
Graph 1

Republican Seats vs. Votes for Plan 1151C
for the 64 Statewide Elections from 1992 to 2002



Graph 2

Republican Seats vs. Votes for Plan 1374C for the 64 Statewide Elections from 1992 to 2002



REPORT OF ALLAN J. LICHTMAN ON VOTING-RIGHTS ISSUES IN TEXAS CONGRESSIONAL REDISTRICTING

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November 14, 2003

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Introduction

1. I have been asked to examine the implications for the voting rights of minorities in Texas of the proposed redistricting Plan 1374C enacted by the state legislature. This review focuses on the effects of Plan 1374C on opportunities for minority voters to participate fully in the political process and to elect candidates of their choice to Congress. It examines as well the issue of intentional discrimination against minorities through the fragmentation of minority voting strength in existing districts. It also studies the effects of Plan 1374C on the opportunities for minorities to participate fully in the political process through consequentially influencing congressional elections. I have, in this study, reached the following conclusions developed in detail below:[1]

> Voting by Anglos and minorities in Texas is polarized along racial lines in both primary and general elections. Hispanic and African-American voters are cohesive in supporting candidates of their own race in primary elections and Democratic candidates in general elections. Anglo voters in turn usually bloc vote against the candidates of choice of minority voters in primary and general elections. This pattern of racial bloc voting is found across Texas through the 1990s and early twenty-first century, including all regions of the state discussed below.

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[1] Given the time constraints of its production, this report may be revised or updated. I would also anticipate providing rebuttal testimony to the testimony of experts for defendants.

In the Dallas/Tarrant County region, Plan 1374C impedes opportunities for minority voters to participate fully in the political process and to elect candidates of their choice by fragmenting or cracking minority communities, thereby submerging minority voters in districts dominated by Anglo voters.

As demonstrated by Congressional District 24 (CD 24) in current Plan 1151C, it is feasible to remedy this fragmentation and create a second district in the Dallas/Tarrant region (in addition to CD 30) in which African-American voters have an effective opportunity in primary and general elections to elect candidates of their choice to Congress.

The fragmentation of black voters in the Dallas/Tarrant area represents an intentional effort to deny black voters the opportunity to participate fully in the political process and to elect candidates of their choice to Congress. Examination of the redistricting maps provides convincing evidence of a deliberate fragmentation of African-Americans and their submergence in Anglo-dominated, heavily Republican districts where black voters will lack even minimal influence over the congressional election and will be represented by Members of Congress who do not share their priorities and interests. Such fragmentation is not justified by such nonracial districting criteria as geographic compactness, the preservation of whole counties and cities, protection of senior

incumbents, unification of communities of interests, and retention of the cores of previous districts. To the contrary, the fragmentation of African-Americans in Plan 1374C subverts rather than advances these criteria, demonstrating the racial intent of Plan 1374C.

The fragmentation that takes place in the Dallas/Tarrant region is not offset by efforts to enhance the black component of one of the Houston-based majority-minority districts. Whereas, the fragmentation in Dallas/Tarrant will clearly make it a practical impossibility for African-Americans in the area of CD 24 to elect candidates of their choice to Congress, it is unclear whether changes in the Houston area will have any substantial impact on black voter opportunities in congressional elections.

Plan 1374C also fragments Hispanic voter strength in the southwestern area of the state covered by Congressional District 23 in Plan 1151C. New Congressional District 23 created for this region of the state under Plan 1374C is not an effective opportunity district for Hispanic voters because it dilutes Hispanic voter strength. However, as indicated by Congressional District 23 under Plan 1151C, it is feasible to create an effective Hispanic opportunity district in this part of southwest Texas.

The fragmentation of Hispanic voter strength in the southwest is not offset by

changes elsewhere in Plan 1374C. Plan 1374C does not enhance the opportunity for Hispanics to elect candidates of their choice in the Houston area through changes to CD 29. Plan 1374C does attempt to create an additional Hispanic opportunity district that runs from the Mexican border to Austin (CD 25), but it does so by jeopardizing the opportunities for Hispanic voters to elect candidates of their choice in general elections in Congressional District 15. Thus, the net effect of Plan 1374C for Hispanic voters is to weaken their opportunities to participate fully in the political process and to elect candidates of their choice to Congress.

Plan 1374C also dismantles seven districts (CDs 1, 2, 4, 9, 10, 11, and 17) in which African-American and Hispanic voters play a critical role in determining the election of candidates in general elections – Anglo Democratic representatives who have faithfully represented minority interests in Congress. The minority voters in these influence districts are submerged under Plan 1374C within heavily Republican districts – often with Republican incumbents – in which they will have no influence on the outcome of general elections and will be represented by Members of Congress who do not share their priorities and interests.

For the state of Texas there are major turnout differences between Anglos, blacks, and Hispanics, with Anglo turnout substantially higher than black or Hispanic

turnout. These turnout differences reflect the substantially higher socio-economic status of Anglos relative to blacks and Hispanics in Texas.

I. Background and Qualifications

2. I am a Professor of History at American University in Washington, D.C. Formerly, I served as Chair of the History Department and Associate Dean of the College of Arts and Sciences at American University. I received my BA in History from Brandeis University in 1967 and my PhD in History from Harvard University in 1973, with a specialty in the mathematical analysis of historical data. My areas of expertise include political history, voting analysis, and historical and quantitative methodology. A copy of my curriculum vitae, which accurately sets forth my professional qualifications and experience, is attached to this report as Appendix 1, along with a table of cases. I am being compensated at a rate of $300 per hour.

3. I am the author of numerous scholarly works on quantitative methodology in social science. This scholarship includes articles in such academic journals as *Political Methodology*, *Journal of Interdisciplinary History*, and *Social Science History*. I have also coauthored, with Dr. Laura Langbein, *Ecological Inference*, a standard text on the subject of inferring the behavior of population groups from data collected for political units such as voting precincts. In addition, I have published articles on the application of social science analysis to the Voting Rights Act. This work includes articles in such journals as the *Journal of Law and Politics*, *La Raza Law Journal*, *Evaluation Review*, *Journal of Legal Studies*, and *National Law Journal*. My scholarship also includes the use of quantitative and qualitative techniques to conduct political and historical studies of

voting, published in such academic journals as *The Proceedings of the National Academy of Sciences*, *The American Historical Review*, and *The Journal of Social History*. Quantitative and historical analyses also ground my books, *Prejudice and the Old Politics: The Presidential Election of 1928*, *The Thirteen Keys to the Presidency* (co-authored with Ken DeCell), and *The Keys to the White House*.

4. I have worked as a consultant or expert witness for both plaintiffs and defendants in more than seventy voting-rights and redistricting cases. I have been admitted as an expert witness in voting rights, political history, political systems, statistical methodology, quantitative analysis of voting, and socioeconomic analysis, among other matters, in more than sixty court cases in which I have presented oral or written testimony. I have testified in several voting-rights and redistricting cases in Texas, including in-court testimony on congressional redistricting in Texas following both the 1990 and 2000 Censuses.

5. As indicated by Bernard Grofman, Lisa Handley, and Richard G. Niemi, in their standard text, *Minority Representation and the Quest for Voting Equality*, I was one of three scholars who independently developed the standard "two-equation" ecological regression methodology accepted by the U.S. Supreme Court in the path-breaking case on voting-rights analysis, *Thornburg v. Gingles*, 478 U.S. 30 (1986), and used as the standard procedure for analyzing minority and white voting in voting-rights litigation. The ecological regression methodology is developed in my co-

authored book, *Ecological Inference*, and analyzed in my December 1991 article in *Evaluation Review*.[2]

II. Voting Is Polarized Along Racial Lines in Texas Primary and General Elections

6. Because this is not my first experience analyzing Texas electoral and demographic data, I will begin by summarizing my earlier findings and then will update them based on my latest analyses. For purposes of the *Vera v. Richards* litigation in 1994, I conducted an ecological regression analysis of voting in Texas, focused on primary elections, which found that as part of a pattern of racially polarized voting in the state, minority voters were usually cohesive in support of candidates of their choice, and Anglo voters usually bloc voted against the candidates of choice of minorities.[3] Specifically, my report included the results of ecological regression analyses for nine majority-minority congressional districts, covering the period from 1986 to 1992. The results of this analysis showed a clear pattern of cohesion among minority voters: substantial majorities of Hispanic voters voted for Hispanic candidates in elections involving Hispanic and Anglo candidates, and a substantial majority of African-American voters voted for African-American candidates in elections involving Anglo and black candidates. Likewise the results showed a clear pattern of

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[2] Bernard Grofman, Lisa Handley, and Richard G. Niemi, *Minority Representation and the Quest for Voting Equality* (Cambridge: Cambridge University Press, 1992), p. 146; Laura Irwin Langbein and Allan J. Lichtman, *Ecological Inference* (Sage Series on Quantitative Applications in the Social Sciences, 1978); Allan J. Lichtman, "Passing the Test: Ecological Regression in the Los Angeles County Case and Beyond," *Evaluation Review* (1991).

[3] "Final Report of Allan J. Lichtman, *Vera v. Richards*," June 26, 1994.

bloc voting by Anglos against black and Hispanic candidates of choice.

7. In testimony on congressional and state legislative redistricting following the 2000 Census, I updated this analysis of racially polarized voting, confirming minority cohesion and Anglo bloc voting across the state of Texas. The updated analysis looked at statewide primary and general elections in major counties with large concentrations of minorities: Bexar, Cameron, Dallas, El Paso, Harris, Hidalgo, Nueces, Tarrant, and Travis.[4] The analysis also examined "Anglo versus minority" Democratic primary and runoff elections for state representative, state senate, and Congress in which Anglo candidates competed against minority candidates.

8. Tables 1 and 2 report ecological regression estimates of Hispanic, black, and Anglo voting in statewide "Anglo versus minority" primary elections. To include counties from rural south Texas, the analysis of statewide Hispanic-versus-Anglo primaries supplemented the county-level analysis with Congressional District 28 under the pre-2000 plan. Table 1 reports results for five Hispanic-versus-Anglo statewide primary elections from 1994 to 1998. These include the primary and runoff elections for Supreme Court Place 8 in 1994 (Gonzalez), the primary and runoff elections for United States Senate in 1996 (Morales), and the primary for Agriculture Commissioner in 1998 (De Leon). The 1994 primary included one Hispanic and two Anglo candidates, the 1994 runoff included one Hispanic and one Anglo candidate, the 1996 primary included one Hispanic and three

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[4] For Bexar, Cameron, El Paso, Hidalgo, and Neuces counties, which have limited black populations, the analysis reports only Hispanic and Anglo voting. For Dallas, Harris, Tarrant, and Travis counties, the analysis reports Hispanic, African-American, and Anglo voting.

Anglo candidates, the runoff included one Hispanic and one Anglo candidate, and the 1998 primary included one Hispanic and one Anglo candidate. Table 2 reports results for the 1998 primary election for Attorney General that included one African-American (Overstreet) and two Anglo candidates. The results of analysis for this election are reported only for Dallas, Harris, Tarrant, and Travis Counties, given the small proportion of blacks in the other counties examined.

Table 1
Ecological Regression Analysis
Mean Vote for Candidates
Hispanic, Black, and Anglo Voters
Nine Counties and Congressional District 28
5 Statewide Primary Elections*

	% of Hispanic Voters for Hispanic Candidates	% of Black Voters for Hispanic Candidates	% of Anglo Voters for Hispanic Candidates
Bexar County	76%	NA	25%
Cameron County	74%	NA	25%
Dallas County	56%	31%	35%
El Paso County	73%	NA	31%
Harris County	71%	30%	27%
Hidalgo County	71%	NA	52%

Nueces County	71%	NA	27%
Tarrant County	62%	27%	30%
Travis County	78%	43%	38%
Congressional District 28	77%	NA	9%
Mean All Elections	**71%**	**33%**	**30%**

* 1998 Agriculture Commissioner Primary, 1996 US Senate Primary and Runoff, 1994 Supreme Court Primary and Runoff.

Table 2

Ecological Regression Analysis
Vote for Black Candidate Overstreet in
1998 Democratic Primary for Attorney General

	% of Hispanic Voters for Black Candidate	% of Black Voters for Black Candidate	% of Anglo Voters for Black Candidate
Dallas County	0%	66%	8%
Harris County	0%	67%	0%
Tarrant County	NA	76%	0%

Travis County	0%	80%	23%
Mean	**0%**	**72%**	**8%**

9. The results reported in Table 1 and Table 2 confirm the pattern of racially polarized voting disclosed in my 1994 report on primary elections. For the large counties and previous CD 28, Table 1 discloses a cohesive Hispanic electorate that usually united behind Hispanic candidates and, in turn, a cohesive Anglo electorate that usually united against Hispanic candidates. Likewise, results reported in Table 2 disclose a cohesive African-American

electorate that usually united behind the African-American candidate. In turn, the results reported in Table 2 disclose a cohesive Anglo electorate that solidly bloc voted against the African-American candidate in the only counties studied.

10. Additional confirmation of minority voter cohesion and Anglo bloc voting in primary elections is provided in Table 3, which analyzes minimally competitive Democratic primary elections for state representative, state senator, and U.S. Representative identified by the Texas Legislative Council as involving minority and Anglo candidates from 1994 to 2000.[5] Table 3 includes 27 legislative elections with Hispanic candidates and 7 legislative elections with black candidates. In elections with Hispanic candidates, Table 3 reveals that a mean of 61 percent of Hispanic voters are estimated to have supported the Hispanic candidates, compared to a mean of 18 percent of Anglo votes. In

[5] A "minimally competitive" election is one where the losing candidate receives at least 15 percent of the vote.

elections with black candidates, Table 3 discloses that a mean of 72 percent of African-American voters are estimated to have supported the African-American candidates, compared to a mean of 21 percent of Anglo voters.

Table 3
Ecological Regression Estimates of Hispanic, Black, and Anglo Voting
Anglo v. Minority Democratic Primary Elections
Congressional, Representative, and Senate Districts, 1994-2000

Year & Election District & Races of Candidates	% of Hispanic Voters for Hispanic Candidate	% of Black Voters for Hispanic Candidate	% of Anglo Voters for Hispanic Candidate	% of Hispanic Voters for Black Candidate	% of Black Voters for Black Candidate	% of Anglo Voters for Black Candidate	% of Hispanic Voters for Anglo Candidate	% of Black Voters for Anglo Candidate	% of Anglo Voters for Anglo Candidate
2000 Primary									
Congressional District 23 Anglo/Hispanic	80	NA	0	-	-	-	20	NA	100
House District 43 Anglo/Hispanic	45	NA	0	-	-	-	55	NA	100
House District 101 Anglo/Hispanic	46	NA	30	-	-	-	54	NA	70
Senate District 26 Anglo/Hispanic	56	NA	50	-	-	-	44	NA	50

11. For general elections, Table 4 reports the results of analysis for six statewide elections in nine counties. The elections studied include the five Anglo-versus-minority statewide general elections from 1994 to 2000. In four of these elections, Hispanic Democrats competed against Anglo Republicans. In one election – for Railroad Commissioner in 1998 – an Anglo Democrat competed against a Hispanic Republican. Given that there were no multiracial statewide general elections in 2000, the analysis includes for that year the election for Court of Criminal Appeals Place 8, in which an Anglo Democrat competed against an Anglo Republican. There were no black-versus-Anglo statewide general elections during this period.

Table 4
Ecological Regression Estimates
Mean Vote for Democratic Candidate
Hispanic, Black, Anglo Voters
9 Counties, 6 General Elections

	% of Hispanic Voters for Democratic Candidate	% of Black Voters for Democratic Candidate	% of Anglo Voters for Democratic Candidate
Bexar County	98%	NA	20%
Cameron County	84%	NA	19%

Dallas County	100%	100%	25%
El Paso County	88%	NA	26%
Harris County	99%	100%	23%
Hildago County	86%	NA	32%
Nueces County	92%	NA	16%
Tarrant County	100%	100%	27%
Travis County	97%	99%	43%
Mean All Elections	**94%**	**100%**	**26%**

* 2000 Court of Criminal Appeals Place 8, 1998 Land Commission and Railroad Commission, 1996 US Senate and Railroad Commission, 1994 Attorney General.

12. The results reported in Table 4 disclose that both Hispanic and black voters were usually cohesive in support of Democratic candidates in general elections, whereas Anglo voters were usually cohesive in support of Republican candidates. Regardless of the racial identities of the

Year & Election District & Races of Candidates	% of Hispanic Voters for Hispanic Candidate	% of Black Voters for Hispanic Candidate	% of Anglo Voters for Hispanic Candidate	% of Hispanic Voters for Black Candidate	% of Black Voters for Black Candidate	% of Anglo Voters for Black Candidate	% of Hispanic Voters for Anglo Candidate	% of Black Voters for Anglo Candidate	% of Anglo Voters for Anglo Candidate
1998 Primary									
Congressional District 23 Anglo/Hispanic	58	NA	0	-	-	-	42	NA	100
House District 30 Anglo/Black	-	-	-	70	100	26	30	0	74
House District 54 Anglo/Hispanic	50	NA	15	-	-	-	50	NA	85
House District 75 Anglo/Hispanic	83	NA	35	-	-	-	17	NA	65
1998 Runoff									
Congressional District 23 Anglo/Hispanic	62	NA	7	-	-	-	38	NA	93
House District 54 Anglo/Hispanic	71	NA	0	-	-	-	29	NA	100
1996 Primary									

Year & Election District & Races of Candidates	% of Hispanic Voters for Hispanic Candidate	% of Black Voters for Hispanic Candidate	% of Anglo Voters for Hispanic Candidate	% of Hispanic Voters for Black Candidate	% of Black Voters for Black Candidate	% of Anglo Voters for Black Candidate	% of Hispanic Voters for Anglo Candidate	% of Black Voters for Anglo Candidate	% of Anglo Voters for Anglo Candidate
Congressional District 5 Anglo/Black	-	-	-	NA	68	31	NA	32	69
Congressional District 15 Anglo/Hispanic	77	NA	38	-	-	-	23	NA	62
Congressional District 23 Anglo/Hispanic	39	NA	45	-	-	-	61	NA	55
Congressional District 29 Anglo/Hispanic	46	NA	0	-	-	-	54	NA	100
House District 27 Anglo/Hispanic	63	71	14	-	-	-	37	29	86
House District 51 Anglo/Hispanic	92	NA	15	-	-	-	8	NA	85
House District 77 Anglo/Hispanic	73	NA	26	-	-	-	27	NA	74
House District 90	74	25	29	0	56	0	26	19	71

Year & Election District & Races of Candidates	% of Hispanic Voters for Hispanic Candidate	% of Black Voters for Hispanic Candidate	% of Anglo Voters for Hispanic Candidate	% of Hispanic Voters for Black Candidate	% of Black Voters for Black Candidate	% of Anglo Voters for Black Candidate	% of Hispanic Voters for Anglo Candidate	% of Black Voters for Anglo Candidate	% of Anglo Voters for Anglo Candidate
Anglo/Hispanic/Black									
Senate District 29 Anglo/Hispanic	74	NA	15	-	-	-	26	NA	85
Year & Election District & Races of Candidates	% of Hispanic Voters for Hispanic Candidate	% of Black Voters for Hispanic Candidate	% of Anglo Voters for Hispanic Candidate	% of Hispanic Voters for Black Candidate	% of Black Voters for Black Candidate	% of Anglo Voters for Black Candidate	% of Hispanic Voters for Anglo Candidate	% of Black Voters for Anglo Candidate	% of Anglo Voters for Anglo Candidate
1996 Runoff									
Congressional District 15 Anglo/Hispanic	56	NA	30	-	-	-	46	NA	65
Congressional District 23 Anglo/Hispanic	54	NA	40	-	-	-	46	NA	63
House District 90 Anglo/Hispanic	59	48	16	-	-	-	41	52	84

Year & Election District & Races of Candidates	% of Hispanic Voters for Hispanic Candidate	% of Black Voters for Hispanic Candidate	% of Anglo Voters for Hispanic Candidate	% of Hispanic Voters for Black Candidate	% of Black Voters for Black Candidate	% of Anglo Voters for Black Candidate	% of Hispanic Voters for Anglo Candidate	% of Black Voters for Anglo Candidate	% of Anglo Voters for Anglo Candidate
Senate District Anglo/Hispanic	52	NA	17	-	-	-	48	NA	83
1994 Primary									
Congressional District 25 Anglo/Black	-	-	-	NA	63	7	NA	37	93
Congressional District 29 Anglo/Hispanic	55	NA	0	-	-	-	45	NA	100
House District 31 Anglo/Hispanic	64	NA	0	-	-	-	36	NA	100
House District 37 Anglo/Hispanic	66	61	64	-	-	-	34	39	36
House District 43 Anglo/Hispanic	66	NA	2	-	-	-	34	NA	98
House District 50 Anglo/Black	-	-	-	93	100	67	7	0	33
House District 90	35	9	0	0	46	0	65	44	100

Year & Election District & Races of Candidates	% of Hispanic Voters for Hispanic Candidate	% of Black Voters for Hispanic Candidate	% of Anglo Voters for Hispanic Candidate	% of Hispanic Voters for Black Candidate	% of Black Voters for Black Candidate	% of Anglo Voters for Black Candidate	% of Hispanic Voters for Anglo Candidate	% of Black Voters for Anglo Candidate	% of Anglo Voters for Anglo Candidate
Anglo/Hispanic/Black									
House District 140 Anglo/Hispanic	47	NA	0	-	-	-	53	NA	100
1994 Runoff									
Congressional District 25 Anglo/Black	-	-	-	NA	74	13	NA	26	87
Mean	**61**	**43**	**18**	**41**	**72**	**21**	**38**	**28**	**80**

Republicans and Democrats competing in these six elections, in every contest in every county, both Hispanics and African-Americans voted overwhelmingly for the Democratic candidates. Likewise, in the universe of elections and counties studied, Anglo voters usually united behind the Republican candidates in general elections.

13. In sum, the analysis of both primary and general elections for a range of federal and state legislative elections, as well as state executive and judicial contests, across regions of the state of Texas through 2000, discloses a clear pattern of minority voter cohesion and Anglo bloc voting in both primary and general elections. Taken together, the cohesion of the Hispanic electorate and of the African-American electorate and the bloc voting of the Anglo electorate result in a pattern of polarized voting in Texas.

14. These findings, updated through 2000, were confirmed by the testimony of other expert witnesses in the 2001 litigation, including experts for Republican Party interests and the State of Texas. There was broad agreement among expert witnesses testifying on congressional redistricting following the 2000 Census that voting is polarized along racial lines in the state of Texas, with minorities usually cohesive in support of candidates of their choice and Anglos usually bloc voting against the minority candidates of choice. Most of the experts used the methodology of ecological regression to study racially polarized voting. Dr. Lisa Handley, the expert for Lt. Governor Ratliff, concluded, "after reviewing tables summarizing estimates of voting patterns by race/ethnicity in eight Texas counties, I have concluded that voting in at least these areas of Texas is racially polarized." Dr. Handley indicated that "the counties . . . in the summary tables

included the six largest counties in the state – Bexar, Dallas, El Paso, Harris, Tarrant, and Travis."[6] All of the analyses in the counties were based on the ecological regression methodology. Dr. Thomas L. Brunell, expert for the Associated Republicans of Texas, used ecological regression to conduct a "set of analyses to determine whether racial bloc voting exists among the communities in the 11 minority districts" in the Associated Republicans' plan.[7] He concluded that his analyses "demonstrate the presence of racially polarized voting on the part of whites, as well as Hispanics and African-Americans."[8] Dr. Richard Engstrom, the expert for American GI Forum and individual Hispanic intervenors, examined several primary and general elections involving Hispanic candidates from 1992 to 1998 "in 63 contiguous counties in the southern portion of Texas."[9] These counties contained 48 percent of the Hispanic residents of voting age in Texas. Dr. Engstrom concluded that his analyses of general elections "reveal 'polarized voting,' as defined by the United States Supreme Court in *Thornburg v. Gingles*, (at 53 n.21). Hispanic voters and non-Hispanic voters did not share the same candidate preferences in any of these seven elections."[10] Dr. Engstrom found that, in three of four primary elections examined, "Hispanic and non-Hispanic voters were divided in their candidate preferences."[11] Dr. Jonathan Katz, expert for the state-court

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[6] Lisa Handley, "An Examination of Proposed Congressional Plan LTG01017C," p. 4.

[7] "Expert Report of Thomas L. Brunell," August 27, 2001, p. 5.

[8] *Ibid.*, p. 61.

[9] "Expert Report by Richard L. Engstrom," August 27, 2001, p. 4.

[10] *Ibid.*, p. 10.

[11] *Ibid.*, pp. 12-13.

plaintiffs and Democratic congressional intervenors, using an alternative methodology termed "ecological inference," reached similar conclusions. He examined every general election for Congress, from 1992 to 2000, in all districts with black and/or Hispanic populations above the statewide average. He found a virtually universal pattern of racially polarized voting, with Hispanic and black voters strongly preferring to support Democratic candidates in congressional elections and Anglo voters strongly preferring to support Republican candidates: Katz found "that every district with higher than average Hispanic or black populations displays statistically significant racial bloc voting. . . . [B]lack and Hispanic voters overwhelmingly support Democratic and non-Anglo candidates, with typical support levels of greater than 70% and often as high as 90%, whereas majorities of Anglos in most districts vote for Republican and Anglo candidates."[12]

15. Dr. John Alford, expert for the Texas Governor and Secretary of State, conducted an ecological regression analysis of seven multiracial general and primary elections in 11 majority-minority congressional districts created in the State's proposed Plan 1044C that included a substantial majority of the state's Hispanic and African-American voting-age populations ("VAP"). He found that, in general elections, black and Hispanic voters "typically vote cohesively in support of black and Hispanic Democratic candidates" and that Anglos "typically vote cohesively for the Republican opponents of minority candidates." In primary elections, he found that African-Americans "typically vote cohesively in support of black candidates," that "Hispanics typically vote cohesively in support of

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[12] Jonathan N. Katz, "Report on Texas Congressional Redistricting: Minority Opportunities and Partisan Fairness," August 27, 2001, p. 1.

Hispanic candidates," and that Anglo voters do not typically vote cohesively for either black or Hispanic candidates.[13]

16. I have now updated these analyses of racially polarized voting with 2002 contests for areas of the state that are the focus of analyses presented below. Such updating, as will be demonstrated below, generally shows a continuing pattern of racially polarized voting.

17. The State of Texas in its 20 October 2003 submission of Plan 1374C to the United States Department of Justice, in a document by Andy Taylor called "Voting Rights Analysis," acknowledged the existence across the State of a usual pattern of racially polarized voting in primary and general elections, including minority voter cohesion and Anglo bloc voting against the candidates of choice of minority voters. In particular, the State's submission cites as a reliable and accurate description of racially polarized voting in Texas the following findings from Dr. Alford's "expert report for the State of Texas from the *Del Rio* trial," which, like this report, also uses ecological regression analysis to study voting in Texas elections:

> Overall, the regression results conform to a well-established pattern. In general elections, black and Hispanic voters (disproportionately Democrats) typically vote cohesively in support of black and Hispanic Democratic candidates. Anglos (disproportionately Republican) typically vote cohesively for the Republican opponents of these minority candidates, although the proportion of Anglo crossover votes rises as

[13] Report of John Alford, p. 9.

> the proportion of Anglo Democrats in a district rises.
>
> In Democratic primary elections, blacks typically vote cohesively in support of black candidates, while Hispanic and Anglo voters typically do not cohesively support black candidates at this level. Similarly, Hispanics typically vote cohesively in support of Hispanic candidates, while black and Anglo voters typically do not cohesively support Hispanic candidates at this level. [14]

On that same page of their submission, the State of Texas also cites in support of the finding of racially polarized voting, my testimony on black, Hispanic, and Anglo voting from the *Balderas* trial (p. 8, footnote 19).

18. This racial polarization has taken place in a diverse state that includes substantial minority populations. Table 5 reports the population percentages of Anglos, blacks, and Hispanics in Texas, using total population, voting-age population (VAP), citizen total population, and citizen voting-age population (CVAP). It also translates these percentages into the proportional numbers of districts in a 32-district congressional plan. The data in Table 5 indicate that the proportional share of districts for African-Americans ranges from just under 4 districts to just over 4 districts and the proportional share of districts for Hispanics ranges from 7.4 to 10.6 districts. Using citizen voting-age data, proportionality for blacks is 4.0 districts and proportionality for Hispanics is 7.4 districts.

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[14] "Voting Rights Analysis," p. 8. This submission letter is included as Appendix 2 of this report.

Table 5

Population Percentages of Demographic Groups
Corresponding Number of Districts
32 District Plan

	Total Population		Voting-Age Population		Citizen Population		Citizen Voting-Age Population	
	Percent	# of Districts	Percent	# of Districts	Percent	# of Districts	Percent	# of Districts
Anglo	54.6	17.5	58.7	18.8	59.1	18.9	64.4	20.6
Black	12.4	4.0	11.7	3.7	13.2	4.2	12.6	4.0
Hispanic	33.1	10.6	29.7	9.5	27.8	8.9	23.0	7.4

III. African-American Voter Opportunities

A. Proposed Plan 1374C Has the Effect of Diluting Black Voter Opportunities in the Dallas/Tarrant County Region.

19. Analysis of Plan 1374C in the Dallas/Tarrant County area demonstrates the three basic requisites for diminishing black voters' opportunities to participate fully in the political process and to elect candidates of their choice: usual patterns of cohesion by minority voters, white bloc voting that usually defeats minority candidates of choice, and the possibility of creating an additional effective minority opportunity district. Patterns of black voter cohesion in the Dallas/Tarrant region for both primary and general elections are demonstrated by the various analyses included in this report. In primary elections, Table 2 reveals that a mean of 71 percent of black voters in Dallas and Tarrant Counties are estimated to have supported the black candidate in the statewide Democratic primary for Attorney General in 1998. An updated analysis of primary elections is also provided in Table 6, which examines two 2002 Anglo-versus-black Democratic primaries: for U.S. Senate – which included black candidate Kirk, Hispanic candidate Morales, and two Anglo candidates – and for Court of Criminal Appeals Place 2 – which included black candidate Whittier and one Anglo candidate. These elections are examined in Table 6 for Dallas and Tarrant Counties combined. Table 6 also includes an analysis of the 2002 runoff election for U.S. Senate which included black candidate Kirk and Hispanic candidate Morales. The results for the U.S. Senate primary confirm the strong patterns of cohesion found in Dallas/Tarrant Counties for the 1998 Attorney General primary, with the overwhelming majority of black voters voting for the black candidate. Likewise in competition with a Hispanic

candidate in the primary, Kirk again wins near unanimous support from black voters. Such cohesion does not, however, emerge for the Court of Criminal Appeals primary, which included black candidate Whittier. This black candidate, however, was rejected by both black and non-black voters across the state of Texas. In general elections, Table 4 discloses that for the period from 1994 to 2000, in both Dallas and Tarrant Counties, black voters are estimated to have provided near unanimous support for Democratic candidates. Identical findings are reported in Dallas/Tarrant Counties for the 2002 general election for U.S. Senate that included black candidate Kirk and Anglo candidate Cornyn. Kirk won near-unanimous support for the combined minority population of Dallas and Tarrant Counties.

Table 6

Ecological Regression Analysis
Racial Bloc Voting in 2002
Primary, Runoff, and General Elections
Dallas and Tarrant Counties Combined

Primary Elections			
	Percent for Black Candidate	**Percent for Anglo Candidate(s)**	**Percent for Hispanic Candidate**
US Senate Black Candidate Kirk Hispanic Candidate Morales			
Anglo Voters	39%	33%	28%
Black Voters	99%	1%	0%
Hispanic Voters	0%	10%	90%
Court of Criminal Appeal, Place 8 Black Candidate Whittier			
Anglo Voters	32%	68%	NA
Black Voters	40%	60%	NA

Hispanic Voters	13%	87%	NA
Runoff Elections			
	Percent for Black Candidate		**Percent for Hispanic Candidate**
US Senate Black Candidate Kirk Hispanic Candidate Morales			
Anglo Voters	48%		52%
Black Voters	98%		2%
Hispanic Voters	0%		100%
General Elections			
	Percent for Democratic Candidate	**Percent for Republican Candidate**	
US Senate Black Candidate Kirk			
Anglo Voters	32%	68%	
Black Voters	100%	0%	
Hispanic Voters	100%	0%	

20. Analysis additionally demonstrates that in both primary and general elections, Anglos bloc voted in the Dallas/Tarrant region against the candidates of choice of black voters. In primary elections, Table 2 reveals that fewer than 10 percent of Anglo voters in either Dallas or Tarrant Counties supported the black candidate in the 1998 statewide Democratic primary for Attorney General. Confirmation of Anglo bloc voting is also found in the 2002 results for Dallas and Tarrant Counties which show less than 40 percent Anglo support for black candidates in the two Anglo-versus-black primaries studied. In the 2002 runoff election against a Hispanic candidate, the black candidate Kirk wins slightly less than half the Anglo vote. Anglo bloc voting usually prevailed in general elections as well. Table 4 demonstrates that a mean of 26 percent of Anglo voters supported Democratic candidates in general elections from 1996 to 2000. In the 2002 general election for U.S. Senate, Table 6 indicates that in Dallas and Tarrant Counties 32 percent of Anglo voters are estimated to have voted for the black Democratic candidate for Senate in the 2002 general election.

21. Additional indication of racial bloc voting in general elections in the Dallas/Tarrant area is provided by an analysis of the 2002 general election for Congress in current CD 24, in which Anglo Democratic incumbent Frost competed against Hispanic Republican challenger Ortega. As indicated by the ecological regression estimates reported in Table 7, Frost lost the Anglo vote in the general election, but secured overwhelming support from all minority voters, including black and Hispanic voters, and prevailed with 66 percent of the overall vote.

Table 7

Ecological Regression Estimates
Racial Bloc Voting in Congressional District 24 in 2002
General Election for Congress

	Percent for Democratic Candidate Frost (Anglo)	Percent for Republican Candidate Ortega (Hispanic)
2002 General		
Anglo Voters	41%	59%
Black Voters	100%	0%
Hispanic Voters	100%	0%
All Voters	66%	34%

22. Analysis additionally demonstrates that it is possible to create an additional black opportunity district in the Dallas/Tarrant area, as indicated by Congressional District 24 in the current court-drawn Plan 1151C. According to the 2000 Census, CD 24 under the current plan is a majority-minority district. Its population is 22.7 percent black and 38.0 percent Hispanic, with a combined black and Hispanic population of 60.2 percent and a combined minority population (black, Hispanic, Asian, and others) of 64.7

percent. Its voting-age population is 21.4 percent black and 33.6 percent Hispanic, with a combined black and Hispanic voting-age population of 54.6 percent and a combined minority voting-age population of 59.3 percent. Its citizen voting-age population is 25.9 percent black and 20.8 percent Hispanic with a combined black and Hispanic citizen voting-age population of 46.4 percent and a combined minority citizen voting-age population of 50.1 percent.

23. Although blacks alone are not a citizen voting-age population majority, Congressional District 24 under Plan 1151C is nonetheless an effective black opportunity district under the Voting Rights Act. Black voters have more than equal opportunity to elect candidates of their choice in Democratic primary elections in CD 24 under Plan 1151C, and the district is more than sufficiently Democratic to elect Democratic nominees to public office. The district is thus quite comparable to the undisputed black opportunity districts under the current plan – District 18 in Houston and District 30 in Dallas – which also lack a black majority of the citizen voting-age population. Similarly CD 9 in the Houston area in proposed Plan 1374C, which the State of Texas in its Section 5 submission alleges is an effective minority opportunity district, lacks a black citizen voting-age majority. None of this should be surprising. To assess the viability of a district for black voters, it is necessary to examine voting patterns in primary and general elections and not to rely on demographic information alone. In its landmark 1986 decision in *Thornburg v. Gingles*, the Supreme Court noted that minority opportunities should be assessed through "searching practical evaluation of the past and present reality, . . . [and] whether the political process is equally open to minority voters. This determination is peculiarly dependent upon the facts of each case . . . and requires an intensely local appraisal of the design and impact of the contested electoral mechanisms."

24. African-Americans in current CD 24 constitute majorities of the electorate in Democratic and primary runoff elections within the district. This is a consequence of low Hispanic turnout and Anglo participation in Republican primaries, the same mechanisms that establish, for example, Districts 18 and 30 as effective black opportunity districts. As indicated in Table 8, from 1996 to 2002, black voters comprised a mean of 64 percent of Democratic primary voters within current CD 24 and 59 percent of the Democratic runoff voters within the district.

Table 8

Primary and Runoff Percentage of African-Americans Among Voters
Current Congressional District 24
Democratic Primary and Runoff Elections
1996-2002

	Percent African-American of Electorate					
	1996	**1998**	**2000**	**2002**	**Mean 1996-2002**	**Mean 2000-2002**
Primary	66%	53%	72%	63%	64%	68%
Runoff	51%	NA	55%	70%	59%	63%
Based on U.S. Senate elections, 1996 & 2002, Attorney General 1998, and President 2000						

During the two most recent elections – 2000 and 2002 – African-Americans comprised a mean of 68 percent of Democratic primary voters within current CD 24 and a mean

of 63 percent of Democratic runoff voters within this district. Current CD 24 is also sufficiently Democratic in general elections that an African-American candidate of choice nominated in a Democratic primary contest would have an excellent opportunity for election to office, winning overwhelming support from blacks and Hispanics as indicated above as well as some support from Anglo voters. As indicated in Table 9, Democratic general-election candidates for statewide office in Texas won a mean of the two-party vote of 55.3 percent from 1996 to 2002 in current CD 24. In the two most recent elections – 2000 and 2002 – Democratic candidates received a mean two-party vote of 56.1 percent in current CD 24.

Table 9
Mean Democratic Percent of Two-Party Vote for Statewide General Elections
Current Congressional District 24
1996-2002

Percent Democratic, Two-Party Vote					
1996	**1998**	**2000**	**2002**	**Mean 1996-2002**	**Mean 2000-2002**
55.4%	53.6%	54.0%	58.1%	55.3%	56.1%

25. Only statewide election results, not congressional election returns, provide a consistent, common basis for assessing the partisan composition of current, past, and proposed congressional districts. Congressional elections are comprised of 32 separate elections in districts across the state that cannot reliably be combined or compared. Some

congressional elections include incumbents, some do not. Some congressional elections are closely contested, others are only lightly contested, and many are not contested at all. The use of statewide elections in preference to congressional elections as a gauge of performance of congressional districts was confirmed by Dr. Keith Gaddie, Professor of Political Science at the University of Oklahoma, who testified before the Senate Committee on Jurisprudence after being hired as a consultant to the Texas Attorney General to "evaluate and assess" the legal implications of alternative plans. According to Dr. Gaddie's Senate testimony, "As Professor Lichtman pointed out, one of the problems we run into in recrafting districts is we remove the incumbents from the equation and congressional elections become a bit difficult to use to baseline change. So we rely on statewide contests in order to conduct analyses and make inferences regarding the effects of change."[15]

26. The opportunities for black voters to nominate candidates of their choice in Democratic primaries in current CD 24 are illustrated by three 2002 elections involving black candidate Kirk. As a reflection of African-American control over the primary and runoff elections, Kirk easily prevailed in each election within the boundaries of current CD 24, with 66 percent of the primary vote and 75 percent of the runoff vote. Given the overwhelming black support for Kirk, as indicated in Table 6, and the large black turnout majorities reported in Table 8, Kirk would easily have prevailed in the primary and runoff elections within CD 24 without a single Anglo or Hispanic vote. In the general election, reflecting

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[15] Committee Archives, 77th Legislature, Senate Jurisprudence Committee, July 22, 2003, http//www.senate.state.tx.us/75r/sehate/commit/c550/c550.htm#Arch

the Democratic electorate in current CD 24, Kirk won 60 percent of the vote.

27. Thus CD 24 under the current plan demonstrates how, in Texas, African-American voters can have effective opportunities to elect candidates of their choice to office despite lacking population majorities or even pluralities in legislative districts. As a consequence of low Hispanic turnout and Anglo participation in Republican contests, African-Americans control the Democratic primary contests in CD 24 and their nominees of choice are able to win election through solid minority support and some cross-over voting from Anglo Democrats in general elections. Dr. Gaddie, the Attorney General's consultant, confirmed in his Senate testimony that CD 24 under Plan 1151C is an effective opportunity district for black voters in both primary and general elections. In his words, "Black voters do control the primary in District 24 and the candidate of choice usually prevails." [16]

28. Plan 1374C includes no Dallas/Tarrant district comparable to CD 24 in Plan 1151C. To the contrary, as indicated in Table 10, the black voters of CD 24 in Plan 1151 are fragmented or "cracked" and placed in five districts overwhelmingly dominated by Anglo Republicans. The ratio of Anglos of voting age to blacks of voting age in these five districts ranges from 4.6 to 12.3. All five districts are under 40 percent Democratic as measured by recent statewide elections. Four of the five districts include Republican incumbents; one is an open seat under 1374C, with nearly a 70 percent Republican majority based on statewide elections. African-Americans in these districts have no opportunity to elect candidates of their choice to Congress. Such

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[16] *Ibid.*, note 15.

fragmentation of minority communities and their submergence within Anglo-dominated districts constitutes the most familiar way in which district lines are drawn to impede the opportunities for minority voters to participate fully in the political process and to elect candidates of their choice.

Table 10

Fragmentation of African-American Population from Current Congressional District 24 to New Districts in Proposed Plan 1374C

	Districts Under Plan 1374C				
	Congressional District 6	**Congressional District 12**	**Congressional District 24**	**Congressional District 26**	**Congressional District 32**
# of Black Persons From Current Congressional District 24 in New District	22,208	2,731		79,170	10,122

% of Black Persons From Current Congressional District 24 in New District	15.1%	1.9%	22.6%	53.7%	6.9%
% Anglo VAP in New District	69.0%	70.2%	67.1%	68.9%	55.1%
% Black VAP in New District	12.3%	5.7%	9.3%	15.0%	7.8%
Ratio of Anglo to Black VAP in District	5.6	12.3	7.2	4.6	7.1

29. The presence of Anglo incumbent Frost in current CD 24 does not affect the identification of this district as an effective opportunity district for black voters. Opportunities in legislative districts are measured relative to the race of the voter, not the race of candidates and representatives. As illustrated by Frost's victory over Hispanic candidate Ortega in the 2002 general election, with Frost overwhelmingly winning the Hispanic vote, Anglos as well as minorities may be candidates of choice of minority voters. Moreover, as indicated in Table 11, in Representative Frost, black voters have a Member of Congress who shares their common interests, whereas in their new Republican districts, black voters will almost certainly be represented by Anglo Republicans who do not share those interests. According to data in Table 11, Representative Frost had a rating of 94 percent on his voting record from the NAACP, comparable to the mean rating of 91.5 percent for the two African-American Members of Congress elected from Texas. In contrast, the mean rating for Anglo Republicans in Texas is 24.8 percent, with similar ratings for the GOP incumbents in districts including the black population from current CD 24. Indeed, the highest score for any Texas Republican is 39 percent.

Table 11

NAACP Scores for Texas Congressional Delegation

	NAACP Scores 2001-2002
Rep. Frost	**94%**
Black Democrats	91.5%
Hispanic Democrats	88.8%

Anglo Democrats	75.4%
Rep. Barton	33%
Anglo Republicans	24.8%
Hispanic Republican	22%
Rep. Granger	22%
Rep. Sessions	22%
Rep. Burgess	NA
Source: NAACP Legislative Scorecard, 107th Congress, 2nd Session.	

B. The Fragmentation of African-Americans in the Area of Current District 24 Is Intended to Deny Black Voters the Opportunity to Participate Fully in the Political Process and to Elect Candidates of Their Choice to Congress

30. Plan 1374C in the Dallas/Tarrant area is clearly drawn with the discriminatory intent of fragmenting black voter strength so that a cohesive black electorate will be denied the opportunity to participate fully in the political process and to elect representatives of its choice. This intent is evident through analyses of maps showing the deliberate placement of African-Americans in Anglo, Republican-dominated districts (all but one of which has an Anglo Republican incumbent) in which they would lack significant influence over congressional elections and would be represented by Members of Congress who do not share their interests. This racially driven districting scheme cannot be justified by such traditional nonracial goals of redistricting as geographic compactness, preservation of communities of interest, protection of influential incumbents, maintenance of

cores of existing districts, or minimization of jurisdictional splits. To the contrary, Plan 1374C deliberately subordinates these goals to the overriding objective of discriminatory racial fragmentation. In addition to this conclusive circumstantial evidence – the same kind of evidence that has supported a finding of intentional race-based redistricting in numerous racial gerrymandering cases under the *Shaw v. Reno* doctrine – documentary evidence also supports racial intent in the drawing of Plan 1374C in the Dallas/Tarrant region.

Congressional District 24

31. As indicated in Table 10, under Plan 1374C, CD 24 retains only 22.6 percent of the black population contained within this district under current Plan 1151C. It is also transformed from a Democratic district with a Democratic incumbent to a nearly 70 percent Republican open-seat district. Yet rather than improving the geographic compactness of this district as is usually the case when the minority population of a district is decreased, changes in CD 24 under Plan 1374C have produced a less compact district as shown in Table 12.

Mean Democratic Two-Party Vote in New District, Statewide Elections, 1996-2002	36.8%	39.0%	31.4%	39.9%	34.3%
Mean Democratic Two-Party Vote in New District, Statewide Elections, 2000-2002	35.2%	36.7%	31.7%	37.6%	35.1%
Incumbent Placement in District	Barton (R) Turner (D) Frost (D)	Granger (R)	Open	Burgess (R)	Sessions (R)

Table 12

Dallas/Tarrant Districts Under Plan 1374C Incorporating at Least 10,000 Black Persons from Congressional District 24 Under Plan 1151C Comparison of Compactness Measures With Districts Under Plan 1151C*

	Plan 1151C Perimeter to Area	Plan 1374C Perimeter to Area	Plan 1151C Smallest Circle	Plan 1374C Smallest Circle
Congressional District 6	2.8	7.2	1.9	4.4
Congressional District 24	6.1	7.5	3.1	3.4
Congressional District 26	2.7	6.7	1.8	5.2
Congressional District 32	3.0	8.9	2.3	2.9
Mean	**3.7**	**7.6**	**2.3**	**4.0**

* Congressional District 12 incorporates fewer than 3,000 black persons from Congressional District 24, too few to have a discernable impact on the district.

Source: *Texas Legislative Council, Report Package.* As indicated by the Council: Each measure is reported on a scale of 1 or greater, **with lower numbers being more compact.**

This Table reports results for the two standard district compactness scores that the Texas Legislative Council computes: the "perimeter to area" score, which measures mainly irregularities in the boundaries of districts; and the "smallest circle" score, which measures mainly the geographic dispersion of districts. The lower the value of these scores – down to a minimum of 1 – the more compact the district. For CD 24 under Plan 1374C, as compared to CD 24 under Plan 1151C, its perimeter-to-area score rises from 6.1 to 7.5 and its smallest-circle score rises from 3.1 to 3.4.

Congressional District 26

32. As indicated in Table 10, as part of the cracking of the black population concentration in current CD 24, 79,170 African-Americans from this district – 53.7 percent of its black population – are reallocated into CD 26 under Plan 1374C. As also indicated in Table 10, they are placed into a district with a Republican incumbent, dominated by Anglos who vote so solidly Republican that the district remains above 60 percent Republican in statewide averages despite this large infusion of solidly Democratic black voters – exemplifying the fragmentation of minority voters and their submergence in an Anglo-controlled district. To incorporate the black population from CD 24, the line drawers extended a long finger southward from the core of proposed CD 26 deep into Tarrant County. The boundary of this finger was clearly drawn based on racial data, with the most heavily black precincts consistently included in this extension of proposed

CD 26. Moreover, CD 26 under Plan 1374C cuts through Cooke County to pick up Anglo Republican voters stretching all the way to the Oklahoma border. As is evident both from the maps in Appendix 3 to this report and from the compactness scores in Table 12, CD 26 is decidedly less compact under Plan 1374C than under Plan 1151C. For CD 26 under Plan 1374C, as compared to CD 26 under Plan 1151C, its perimeter-to-area score more than doubles, rising from 2.7 to 6.7, and its smallest-circle score nearly triples, increasing from 1.8 to 5.2.

Congressional District 32

33. According to Table 10, about 10,000 African-Americans from CD 24 under Plan 1151C are split off and placed into CD 32 under Plan 1374C. As the maps in Appendix 3 of this report indicate, to achieve this fragmentation, the crafters of Plan 1374C contorted the previously compact CD 32 to coil like a snake around CD 30. As is evident from inspection of the maps and the compactness scores in Table 12, CD 32 is far less compact under Plan 1374C than under Plan 1151C. For CD 32 under Plan 1374C, as compared to CD 32 under Plan 1151C, its perimeter-to-area score approximately triples, rising from 3.0 to 8.9, and its smallest-circle score increases from 2.3 to 2.9.

Congressional District 6

34. As indicated in Table 10, the remaining concentration of African-Americans from CD 24 – 22,208 persons – are primarily reallocated to CD 6 under Plan 1374C. To achieve this fragmentation, the line drawers created a saw-toothed extension of CD 6 into Tarrant County. As indicated by inspection of the maps and the compactness scores in Table 12, CD 6 is far less compact under Plan 1374C than under Plan 1151C. Both of its compactness scores more than

double: the perimeter-to-area score rises from 2.8 to 7.2, and the smallest-circle score from 1.9 to 4.4.

35. The sacrifice of geographic compactness in order to crack and submerge African-American voters in Plan 1374C is also demonstrated by comparing mean compactness scores for all four districts in Plan 1374C gaining significant black population from current CD 24. As reported in Table 12, the mean compactness scores for these four districts deteriorate in Plan 1374C, as compared to Plan 1151C. The mean perimeter-to-area score for the four districts more than doubled from Plan 1151C to Plan 1374C, rising from 3.7 to 7.6. The mean smallest-circle score nearly doubled, rising from 2.3 to 4.0.

36. This subordination of geographic compactness to the fragmentation of black population cannot be justified by reference to other traditional redistricting goals: preservation of communities of interests, maintenance of cores of existing districts, protecting influential incumbents, or preserving jurisdictional lines. Plan 1374C strikingly undermines the preservation of communities of interest by reallocating urban blacks from the Dallas/Ft. Worth Metroplex into districts dominated by suburban and even rural Anglos. As an editorial in the *Fort Worth Star-Telegram* noted on 10 October 2003, "East and southeast Fort Worth are shoved into a district dominated by affluent suburbs and Denton County and extending to the Oklahoma border. This abuse of low-income, minority voters alone should cause courts to reject the map."[17] Plan 1374C also disrupts the core of existing districts. As indicated in Table 13, for the four congressional districts listed in Table 12 above, the mean

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[17] Editorial Board, "No Applause Lines," *Fort Worth Star-Telegram*, 10 October 2003.

core retention is 49 percent. This means that more than 1.3 million constituents in just four congressional districts have been reallocated to new districts under Plan 1374C.

37. Plan 1374C additionally disregards the goal of protecting incumbents with seniority and clout, irrespective of party. Rather, the plan targets for defeat one of the most senior and influential members of the Texas delegation: Democrat Martin Frost of CD 24, first elected to Congress in 1978. According to *Congressional Quarterly*, "Frost also courts his own constituency with work on projects near and dear to them. . . . [Frost bargained for a deal] that allowed defense contractor Northrop Grumman Corp. to maintain two plants it had considered moving from Frost's district. He also has lobbied for funds to widen Interstate 30, a crucial Texas traffic artery, and for the Dallas area's light-rail system."[18] Plan 1374C removes Frost's home from CD 24, which is converted into a nearly 70 percent Republican district, and places it in another heavily Republican district, CD 6, where he is paired with fellow Democratic incumbent Turner and Republican incumbent Barton. CD 6 under Plan 1374C includes 66.4 percent of Barton's previous district, but only 4.4 percent of Turner's previous district and 21.6 percent of Frost's previous district. Finally, with respect to preservation of jurisdictional lines, Plan 1374C has a mixed record in comparison with current Plan 1151C. The four relevant districts in Plan 1374C split more counties than they do in Plan 1151C; however, they split fewer municipalities.

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[18] Congressional Quarterly, *Politics in America, 2004*, 999.

Table 13

Core Retention of Dallas/Tarrant Area Districts With a Minimum of 10,000 Black Population from Current District 24

District Under Plan 1151C	Percent of Core Retained in Plan 1374C
District 6	66.4%
District 24	26.5%
District 26	50.9%
District 32	52.3%
Mean	**49.0%**

38. In sum, the fragmentation of the black population in the Dallas/Tarrant area cannot be explained by reference to traditional redistricting goals. Plan 1374C seriously undercuts four such goals (geographic compactness, preservation of communities of interest, maintenance of the cores of existing districts, and protection of influential incumbents), advances none, and achieves a mixed record on one (preservation of jurisdiction lines).

39. It may well be that the overarching goal of Plan 1374C in the Dallas/Tarrant area was political: to deny Dallas/Tarrant Democrats any opportunity to elect a representative of their choice outside CD 30. However, it is certain that the legislators who crafted and adopted the plan knew full well that in using minorities as pawns in this partisan game they had dismantled an African-American

opportunity district and had submerged black voters into districts where no such opportunity exists. Legislators were specifically warned of this by Professor Gaddie, consultant to the Attorney General, in response to questions by Senator Gallegos during his Senate testimony of 22 July 2003:

> Senator Gallegos: "As part of your testimony you stated that African-Americans in District 24 control the primary and elect the candidate of their choice in the general election. Is that true?"
>
> Dr. Gaddie: "That is correct."
>
> Senator Gallegos: "Do you agree that that is not the case in District 24 under Senator Staples' plan."
>
> Dr. Gaddie: "District 24 as drawn under the Staples Plan is a much more Republican district."
>
> Senator Gallegos: "So the answer is yes?"
>
> Dr. Gaddie: "Yes."[19]

Leaders of the redistricting effort in the House and Senate likewise questioned the legality of fragmenting the black population in current CD 24. Representative Phil King (R-Weatherford), House leader of the Republican redistricting effort, withdrew from consideration in July a plan aimed at

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[19] *Ibid.*, note 15. District 24 under the Staples Plan examined by Dr. Gaddie was similar in its Republican composition to District 24 under Plan 1374C.

redrawing CD 24 as a Republican district. According to the *Houston Chronicle*:

> [He] removed it from consideration in the special legislative session Wednesday, admitting the proposal likely would violate federal law protecting minority voting rights. . . . King said he had discovered potential Voting Rights Act violations in his maps for the 18th and 25th districts in Houston and the 24th in Dallas. . . . In the 24th District, held by Rep. Martin Frost, D-Dallas, King said, the combined black and Hispanic voting age population would have decreased from 55 percent to 51 percent, a possible Voting Rights Act violation.

Plan 1374C makes a far more drastic reduction of the combined black and Hispanic population in CD 24, reducing it not to 51 percent, but to 26 percent. And the *Fort Worth Star-Telegram* reported:

> Rep. Phil King, R-Weatherford, said he probably goofed when he redrew the district represented by U.S. Rep. Martin Frost, D-Arlington. The map that King had proposed would take predominately minority areas in southeast and north Fort Worth and put them into a Republican district dominated by Denton County. King had hoped to have the map approved by the House Committee on Redistricting on Wednesday, with a vote by the full House as early as Monday. But he withdrew the map from consideration until it is modified.

After withdrawing his map, King introduced a new design that restored CD 24 to its minority strength under Plan 1151C, in King's words, "just to make sure that there was no possibility that we were in any way violating or going against the spirit of the Voting Rights Act." Similarly, to avoid a voting-rights violation, Senator Chris Harris (R-Arlington) also withdrew a plan to dismantle CD 24. According to the *Fort Worth Star-Telegram* on 20 September 2003:

> Even state Sen. Chris Harris, R-Arlington, who earlier in the summer offered up a map to decimate Frost's district, concedes that the Democrat is untouchable. "I'm just following the leadership," Harris said. "I wanted to deal with Martin Frost. But it was decided by the powers that be that he has a minority-impact district and if we did anything to it we might be vulnerable to a court challenge we didn't want. And that's why I got out of the mapmaking business."[20]

40. Later, on the eve of passage of Plan 1374C, which was drafted behind closed doors by the Republican leadership and again targeted CD 24, King once more raised doubts about tampering with this district, citing an opinion from consulting lawyers that the dismantling of minority opportunity District 24 could not legally be offset by augmenting the black population of a congressional district in

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[20] R. G. Ratcliffe and Rachel Graves, "Texas Legislature Special Session: One Redistricting Plan Withdrawn," *Houston Chronicle*, 3 July 2003, A, 1; Jay Root and Jack Douglas, Jr., "Redistricting Map Goes Back to Drawing Board," *Fort Worth Star Telegram*, 3 July 2003, 1; Jay Root and John Douglas, Jr. "Map's New Lines Would Spare Frost," *Fort Worth Star Telegram*, 4 July 2003, 1; John Moritz, "Senate Panel Adopts Remap," *Fort Worth Star Telegram*, 20 September 2003, 1.

Houston, currently held by Representative Bell. According to the *Houston Chronicle* of 5 October 2003:

> "Obviously, when you have one of the attorneys say, 'This is a problem,' and you're 24 hours away from voting something out, that's a concern," King said. "They're concerned the (black population) enhancement in [District] nine, or Chris Bell's district, is not sufficient to offset the loss of Martin Frost's district," King said.[21]

41. Thus, legislators decided on the basis of secret meetings to crack and disperse black voter strength in CD 24 even though they believed they were tampering with a district protected under the Voting Rights Act, regardless of what was done in the Houston area. Clearly intentional discrimination against African-Americans in the Dallas/Tarrant region cannot be offset by changes elsewhere in the state any more than intentional discrimination against black employees in a company's plant in Dallas could be corrected by better treatment of black employees at its plant in Houston.

C. As Compared to Current Plan 1151C, Plan 1374C Does Not Substantially Improve Black Opportunities to Elect Candidates of Their Choice in the Houston Region.

42. In its Section 2 submission, the state claims to have created in Plan 1374C an additional black opportunity district in the Houston region (District 9, under Plan 1374C). However, as compared to Plan 1151C, Plan 1374C does not

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[21] R. G. Ratcliffe, "New Map Targets Anglo Democrats, GOP's Lawyers Raise Concerns," *Houston Chronicle*, 5 October 2003, A, 33.

create *de novo* an additional district that provides black voters reasonable opportunities to elect candidates of their choice. Rather Plan 1374C, in effect, bolsters the black population in District 25 under Plan 1151C, which the three-judge Court in the *Balderas* decision recognized as a district that already "for all practical purposes was under the control of blacks." District 25 under current Plan 1151C is a majority-minority district with a black population of 23.7 percent, a Hispanic population of 34.3 percent, and a 6.0 percent population of other minorities. Its combined black and Hispanic population is 57.4 percent, and its combined minority population is 63.4 percent. Its voting-age population is 22.0 percent black and 30.7 percent Hispanic, with a 6.4 percent population of other minorities. Its combined black and Hispanic voting-age population is 52.3 percent, and its combined minority voting-age population is 58.8 percent. In validation of the Court's assessment of current CD 25, Table 14 demonstrates that from 1996 to 2002, black voters comprised a majority of the Democratic primary turnout in CD 25, with a mean of 55 percent. During the two most recent elections, blacks comprised a mean of 54 percent of Democratic primary voters within current CD 25. In runoff elections from 1996 to 2002, blacks comprised 48 percent of the Democratic turnout in CD 25 and 49 percent in the most recent elections. In the 2002 Democratic runoff, the only Democratic runoff during recent years to include African-American statewide or congressional candidates within the boundaries of CD 25, blacks comprised 58 percent of the turnout.

Table 14

Ecological Regression Estimates
Primary and Runoff Turnout
Percent Black Among Voters
Current Congressional District 25
Democratic Primary and Runoff Elections
1996-2002

	1996	1998	2000	2002	Mean 1996-2002	Mean 2000-2002
Primary	42%	69%	58%	50%	55%	54%
Runoff	46%	NA	39%	58%	48%	49%

43. Analysis of the 2002 Senate primary, runoff, and general election and the 2002 congressional primary and runoff that included Anglo and black candidates discloses an electorate less polarized along racial lines than in the Dallas/Tarrant area. Table 15 reports results for the 2002 Senate elections and the 2002 Democratic primary that included black candidate Whittier. In the Democratic primary contests, black voters did not unite behind the black candidate Kirk, who won only 42 percent of the black vote. In fact, both Anglo and black voters in the primary voted for the Anglo candidates. According to results reported in Table 15, 53 percent of black voters voted for the Anglo candidates as did 86 percent of Anglo voters. Nearly all the votes for Anglo candidates went to Representative Bentsen, who had represented CD 25 in Congress. The other two Anglo candidates were marginal contenders with minimal support from any racial group. With low Anglo support and less than

majority black support, Kirk overall won 22 percent of the vote cast within current CD 25 in the primary election. Likewise, black candidate Whittier lost in the primary election with majority opposition from Anglos and blacks here, as elsewhere in the state. In the runoff

Table 15

Ecological Regression Analysis
Racial Bloc Voting in Congressional District 25 in 2002
Primary, Runoff, and General Elections

Primary Elections			
	Percent for Black Candidate	**Percent for Anglo Candidate(s)**	**Percent for Hispanic Candidate**
US Senate Black Candidate Kirk Hispanic Candidate Morales			
Anglo Voters	7%	86%	7%
Black Voters	42%	53%	6%
Hispanic Voters	NA	NA	NA
All Voters	22%	67%	11%

Court of Criminal Appeal, Place 2 Black Candidate Whittier			
Angelo Voters	35%	65%	
Black Voters	38%	62%	
Hispanic Voters	NA	NA	
All Voters	37%	63%	
Runoff Elections			
	Percent for Black Candidate		**Percent for Hispanic Candidate**
US Senate Black Candidate Kirk Hispanic Candidate Morales			
Anglo Voters	61%		39%
Black Voters	94%		6%

Hispanic Voters	NA		NA
All Voters	79%		21%

General Elections			
	Percent for Democratic Candidate	**Percent for Republican Candidate**	
US Senate Black Candidate Kirk			
Anglo Voters	33%	67%	
Black Voters	99%	1%	
Hispanic Voters	NA	NA	
All Voters	54%	46%	

election, Kirk prevailed overwhelmingly against Hispanic candidate Morales with substantial majority support from both black and Anglo voters. In this Democratic district, Kirk prevailed in the general election with nearly unanimous black support and a third of the Anglo vote. Kirk's failure to win in one of three elections within current CD 25 – the primary election – reflected not just Anglo bloc voting against him, but a lack of African-American support. And his victory in the runoff reflected both African-American and Anglo support. In none of these Democratic elections then was there significant polarization along racial lines between blacks and Anglos. There was significant polarization in the general election, but Kirk prevailed in current CD 25 with solid black support. Indeed, as indicated in Table 16,

outcomes for the statewide primary, runoff, and general elections involving black candidates

Table 16

Candidates Prevailing Within Boundaries of Congressional District 25, Plan 1151C and Congressional District 9, Plan 1374C 2002 Primary, Runoff, and General Elections

	Winner Within District	
	Congressional District 25, Plan 1151C	**Congressional District 9, Plan 1374C**
2002 Senate Primary	Bentsen	Bentsen
2002 Ct Criminal Appeals Place 2	Montgomery	Montgomery
2002 Senate Runoff	Kirk	Kirk
2002 Senate General	Kirk	Kirk

in 2002 were precisely the same in proposed District 9 under Plan 1374C as in current District 25 under Plan 1151C, with Kirk and Whittier losing the primary and Kirk winning the runoff and general elections.

44. Table 17 reports results for the 2002 Anglo-versus-black primary and runoff for Congress in CD 25. Given that the vote was closely divided among the four candidates in the primary election, Table 17 reports results individually for each candidate. For the primary election, results reported in Table 17 show that the black candidate Robinson carried a bare majority of the black vote, with 51 percent, enough to place him in the runoff election with only 26 percent of the total votes cast. Bell also obtained substantial black support, winning 37 percent of the black vote cast in the election. Considering only the black vote cast for either Robinson or Bell, Robinson received 58 percent of this vote and Bell 42 percent. The bulk of the Anglo vote was about equally divided between Anglo candidates Bell and Colbert, with each winning 37 percent. Thus, it was Bell's strong support among black voters that propelled him into the runoff election against Robinson, as the candidates preferred by 88 percent of black voters made the runoff. In an extremely low-turnout runoff election with less than four percent turnout of the voting-age population, Bell won the bulk of the Anglo vote (88%), but also received substantial crossover support from blacks, winning 31 percent of the black vote. That gave him an eight-point victory in an election in which the majority of voters were black.

Table 17

Ecological Regression Estimates
Racial Bloc Voting in Congressional District 25 in 2002
Congressional Democratic Primary and Runoff Elections

Democratic Primary				
	Percent for Black Candidate Robinson	**Percent for Anglo Candidate Bell**	**Percent for Anglo Candidate Colbert**	**Percent for Anglo Candidate King**
Anglo Voters	4%	37%	37%	22%
Black Voters	51%	37%	5%	7%
Hispanic Voters	NA	NA	NA	NA
All Voters	26%	36%	21%	17%

Democratic Runoff		
	Percent for Robinson	**Percent for Bell**
Anglo Voters	12%	88%
Black Voters	69%	31%
Hispanic Voters	NA	NA
All Voters	46%	54%

General Election			
	Percent for Democratic Candidate	Percent for Republican Candidate	
Anglo Voters	41%	59%	
Black Voters	96%	4%	
Hispanic Voters	NA	NA	
All Voters	56%	44%	

45. The primary and runoff contests involving Bell and Robinson cannot, of course, be replicated within proposed District 9 under Plan 1374C, because numerous precincts of new District 9 were not in CD 25 when the election was held. And it certainly is not predictable that an African-American challenger would prevail in a future primary contest against Bell in proposed CD 9 given that he won 31 percent of the black vote in an open-seat runoff and 42 percent of the black vote in an open-seat primary when stacked up only against black candidate Robinson. In 2004 Bell would be running as an incumbent Member of Congress. It is important to note that Bentsen, not running as a congressional incumbent seeking reelection but as a retiring congressional incumbent seeking to move up to the Senate, beat a strong black candidate Kirk in the battle for the black vote in CD 25 under Plan 1151C. Within new CD 9 under Plan 1374C, as indicated in Table 18, Bentsen also beat Kirk in the competition for the black vote in the 2002 Democratic primary, winning 52

Table 18

Division of the Black Vote in Congressional District 9 Under Plan 1374C in the 2002 Democratic Primary for Senate

	Kirk (B)	Bentsen (A)	Other Anglo	Morales (H)
Percent of the Black Vote for Candidate	42%	52%	1%	5%

percent, compared to 42 percent for Kirk.[22] Even Republican sponsors of redistricting doubted whether enhancement of the black voting-age population in current CD 25 to the 36 percent level in proposed CD 9 would be sufficient to affect the outcome of future congressional elections. According to the *Houston Chronicle*, Representative King had first "told the committee Tuesday that the reconfigured 25th District in Harris County likely would elect a black representative, but 'it appears now its numbers will not reach that level.' King's proposal would have increased the district's black voting-age population from 22 percent to 36 percent and would have kept the Hispanic population at 31 percent."[23] These

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[22] The drafters of Plan 1374C attempted to draw Bell outside CD 9, but according to a 17 October 2003 report in *The Houston Chronicle* (R. G., Ratcliffe, "Map lines aren't all that move under GOP plan," Section A, p. 1), Bell has indicated that he will run for reelection within CD 9 if necessary.

[23] *Ibid.*, note 19.

minority percentages, which led to the withdrawn plan, are virtually identical to the minority percentages in Plan 1374C, which pegged the black voting-age population of CD 9 at 36.5 percent and the Hispanic voting-age population at 30.3 percent.

46. In addition, the argument that a violation of Section 2 of the Voting Rights Act in Dallas/Tarrant can be rectified by augmenting the black percentage of a Houston-based district defies logic. The *Balderas* Court certified that Plan 1151C conforms to Section 2 of the Voting Rights Act, in the Houston region and elsewhere in the state. This judgment was affirmed by the United States Supreme Court. Thus, a Voting Rights Act violation created by Plan 1374C in Dallas/Tarrant certainly cannot be offset by an alleged repair of a voting-rights defect in Houston which does not exist. Moreover, even if for analytic purposes it is assumed that Plan 1151C violates the Voting Rights Act by depriving African-Americans of opportunities to elect candidates of their choice in a second Houston-based district, the State cannot be brought into compliance by a new plan that repairs the voting-rights defect in Houston but creates a new violation in Dallas/Tarrant. Moreover, given the proportionality data presented in Table 5 above, the State cannot fall back upon the argument that three African-American opportunity districts (two in Houston and one in Dallas) match or exceed proportionality for African-Americans across the state.

IV. Hispanic Voter Opportunities

A. Plan 1374C Dilutes Hispanic Voter Opportunities in the Area of the State Covered by Current and Proposed Congressional District 23

47. Plan 1374C dilutes Hispanic voter opportunities in the region of the state covered by CD 23 in southwest Texas under the current and proposed plans. This region is marked by racially polarized voting, in both primary and general elections, with Hispanic voter cohesion and Anglo bloc voting. With respect to minority cohesion, for Hispanic-versus-Anglo Democratic primary elections from 1994 through 2000, Table 1 reveals that for both Bexar and El Paso Counties, a mean of more than 70 percent of Hispanic voters united behind Hispanic candidates. There are also 5 Anglo-versus-Hispanic congressional primary or runoff elections within CD 23 (in its pre-2001 configuration) from 1994 to 2000 reported in Table 3. In 4 of these 5 elections, a majority of Hispanic voters supported the Hispanic candidate. For all 5 elections, a mean of 59 percent of Hispanic voters supported Hispanic candidates. Table 19 updates the analysis of Hispanic-versus-Anglo elections to include for current CD 23 the 2002 statewide primaries involving Anglo and Hispanic candidates. These include the primaries for U.S. Senate with one Hispanic, one black, and two Anglo candidates, and for Land Commissioner and Agriculture Commissioner, each with one Hispanic and one Anglo candidate. The table includes only Anglo and Hispanic voters, because blacks are not a significant presence in this part of the state. In all three primaries, results reported in Table 19 show that a majority of Hispanic voters supported the Hispanic candidate, with a mean of 78 percent support.

Table 19

Ecological Regression Estimates
Racial Bloc Voting in Congressional District 23 in 2002
Anglo v. Hispanic Primaries and General Elections

Primary Elections						
	Anglo Voters			Hispanic Voters		
Election	% for Anglo Candidate	% for Black Candidate	% for Hispanic Candidate	% for Anglo Candidate	% for Black Candidate	% for Hispanic Candidate
US Senate	55%	45%	0%	18%	19%	63%
Agriculture Commissioner	100%	NA	0%	0%	NA	100%
Land Commissioner	100%	NA	0%	28%	NA	72%
Mean	**85%**	**NA**	**0%**	**15%**	**NA**	**78%**

General Elections				
	Anglo Voters		Hispanic Voters	
Election	% for Democratic Candidate	% for Republican Candidate	% for Democratic Candidate	% for Republican Candidate
Governor	16%	84%	99%	1%
Supreme Court, Position 2	21%	79%	99%	1%
Court of Criminal Appeals, Place 1	15%	85%	99%	1%
Mean	**17%**	**83%**	**99%**	**1%**

48. General elections likewise reveal a clear pattern of Hispanic voter cohesion, in this case for Democratic nominees. Table 4 indicates that in both Bexar and El Paso Counties more than 85 percent of Hispanic voters united behind Hispanic candidates. Table 19 updates the general election analysis with the 2002 general election for Governor in which Democratic Hispanic candidate Sanchez competed against Republican Anglo candidate Perry. It also includes general elections for Supreme Court Position 2 and Court of Criminal Appeals Place 1, in which Hispanic Democrats competed against Anglo Republicans. In these elections, Hispanics provided near unanimous support for Hispanic Democratic candidates. Table 20 reports results within CD 23 for general elections from 1996 to 2002, all of which involved Hispanic Republican incumbent Henry Bonilla. The elections from 1996 to 2000 encompass the pre-2001 configuration of CD 23. The results reported in Table 20 clearly demonstrate that Hispanic voters in general elections lined up for the Democratic challenger in every election and voted against Republican Bonilla in every election. For the four elections, a mean of 79 percent of Hispanic voters supported the Democratic candidate, compared to a mean of 21 percent who supported Bonilla.

Table 20

Ecological Regression Estimates
Hispanic and Non-Hispanic Voting in General Elections
in Current and Prior Congressional District 23
1996-2002

Year of Congressional Elections, District 23	% Hispanic Voters Voting for Bonilla	% Hispanic Voters Voting for Democratic Candidates	% Non-Hispanic Voters Voting for Bonilla	% Non-Hispanic Voters Voting for Democratic Candidates
1996	30%	70%	83%	17%
1998	26%	74%	85%	15%
2000	20%	80%	83%	17%
2002	8%	92%	88%	12%
Mean	**21%**	**79%**	**85%**	**15%**

49. The analysis of primary and general elections in the region covered by CD 23 also shows Anglo bloc voting against Hispanic candidates of choice. Table 1 reveals that for Bexar and El Paso Counties Anglo support for Hispanic candidates in Democratic primaries from 1996 to 2000 averaged 25 percent and 31 percent, respectively. In all 5 Anglo-versus-Hispanic congressional primary elections within CD 23 under the pre-2001 plan reported in Table 3, a majority of Anglo voters voted against the Hispanic candidates. For all five elections, a mean of 18 percent of Anglo voters supported Hispanic candidates. In the 2002 statewide primaries involving Hispanic and Anglo candidates, Table 19 reveals close to unanimous Anglo

opposition to statewide Hispanic candidates in CD 23. In the updated general election results for 2002 reported in Table 19, a mean of 17 percent of Anglo voters supported Hispanic Democratic candidates. In general elections for Congress within CD 23, as reported in Table 20, Anglo voters supported Republican Bonilla in every election, providing a mean of only 15 percent for his Democratic opponents who were strongly supported by Hispanic voters.

50. The State of Texas in its Section 5 submission purports to have created in their proposed Plan 1374C a Hispanic opportunity district within this region of Texas, also labeled CD 23 under Plan 1374C. However, this claim will not withstand scrutiny.[24] As indicated in Table 21, CD 23 under Plan 1374C is a solidly Republican district that would provide little opportunity for Hispanic voters to elect candidates of their choice in general elections. As indicated in Table 21, for the 2002 elections, despite the presence of three Hispanic Democratic candidates in the general elections, the mean Democratic statewide vote in CD 23 under Plan 1374C was only 43.2 percent. All statewide Hispanic Democrats in this district, moreover, fell well short of victory in this substantially Republican district. In addition, CD

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[24] If, as the state argues, CD 23 is an effective opportunity district for Hispanic voters, then it follows that CD 25 under the current plan must be an effective opportunity district for black voters. CD 25 under current Plan 1151C, as demonstrated above, provides black voters a far greater opportunity to elect candidates of their choice than does CD 23 under Plan 1374C for Hispanic voters, as demonstrated below.

Table 21

Democratic Performance in Congressional District 23
Plan 1374C

Democratic Percentage Of Two-Party Vote			
2002 Mean Statewide	**2002 Governor Hispanic Candidate Sanchez**	**2002 Supreme Court, Place 2 Hispanic Candidate Yanez**	**2002 Court of Criminal Appeals, Place 1 Hispanic Candidate Molina**
43.2%	44.0%	45.8%	42.3%

23 under Plan 1374C is only 50.9 percent Hispanic in voting-age population and 44.0 percent Spanish surname in its registration. Not only does the evidence show that Hispanics vote overwhelmingly against even Hispanic Republicans in general elections, but as indicated in Table 22, Hispanics who participate in primaries almost universally choose to participate in Democratic rather than Republican primaries. Thus District 23 under Plan 1374C would deny all but a very small proportion of Hispanic voters in this region of the state the opportunity to elect candidates of their choice to Congress. It is virtually certain that the district would elect Republican incumbent Bonilla, who, on average in recent elections, has been the candidate of choice of only about a fifth of the Hispanic electorate. In addition, as illustrated in Chart 1, Bonilla's percentage of the Hispanic vote in general

elections has been steadily declining since 1996, falling to 8 percent in 2002.

Table 22

Percentage of Hispanic Voters in Current Congressional District 23 Participating in Democratic and Republican Primaries, 1996 to 2002

Congressional District 23	Percent of Hispanic Voters in Democratic Primary	Percent of Hispanic Voters in Republican Primary
2002 Primary	99%	1%
2000 Primary	100%	0%
1998 Primary	100%	0%
1996 Primary	100%	0%

51. Congressional District 23 under alternative Plan 1151C demonstrates that it is possible to create in this area of Texas a district which provides Hispanics real opportunities to elect candidates of their choice to Congress. Table 23 compares CD 23 under Plan 1374C (which the state purports to be a Hispanic opportunity district, but as demonstrated above is not) with CD 23 under Plan 1151C. Unlike CD 23 under Plan 1374C, CD 23 under Plan 1151C has a Hispanic voting-age majority of 63 percent (compared to a bare Hispanic VAP majority of 50.9 percent under Plan 1374C) and a clear Spanish surname registration majority of 55

percent. The mean Democratic performance for CD 23 under Plan 1151C is 9.3 percentage points higher than for CD 23 under Plan 1374C. All 2002 Hispanic statewide general election candidates prevailed in CD 23 under Plan 1151C, with votes that were about 10 percentage points higher than in CD 23 under Plan 1374C, where all the Hispanic candidates lose.

Chart 1 - Hispanic % For Bonilla

General Elections, Congressional District 23, 1996-2002

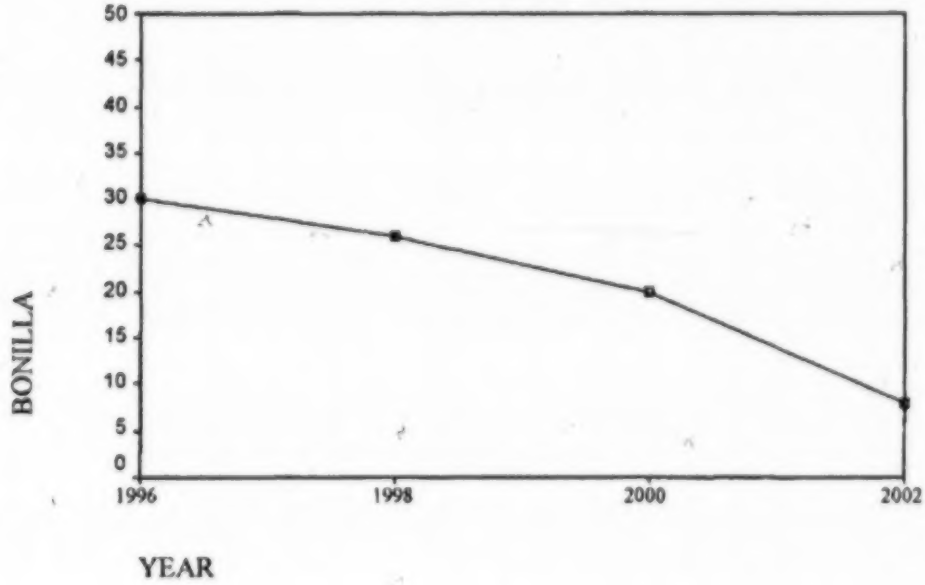


Table 23

Comparison of Congressional District 23 in Plan 1374C With Congressional District 23 in Alternative Plan 1151C

	Congressional District 23, Plan 1151C	Congressional District 23, Plan 1374C	Difference
% Hispanic VAP	63.0%	50.9%	-12.1%
% Spanish Surname Registration	55.3%	44.0%	-11.3%
Mean Two-Party Democratic Vote, Statewide Elections, 2002	52.5%	43.2%	-9.3%
Two-Party Vote for Democratic Hispanic Candidate Sanchez for Governor 2002	54.3%	44.0%	-10.3%

Two-Party Vote for Democratic Hispanic Candidate Yanez for Supreme Court, Place 2, 2002	55.5%	45.8%	-9.7%
Two-Party Vote for Democratic Hispanic Candidate Molina for Court of Criminal Appeals, Pl 1, 2002	52.6%	42.3%	-10.3%

52. The 2002 elections are most probative in CD 23 both because they include the most viable Hispanic candidates in recent years and because Hispanic voter strength is rapidly increasing in recent years as demonstrated by Charts 2 and 3, which show rising rates of Spanish surname registration. As indicated by Chart 3, if trends in the district continue, its percentage of Spanish surname registrants should be nearly two percentage points higher in 2004, as compared to 2002, and nearly four percentage points higher in 2006, as compared to 2002.

53. It is true that Hispanic incumbent Bonilla won CD 23 under Plan 1151C in the 2002 general election despite strong Hispanic voter opposition. However, Bonilla carried the district with a bare 52 percent majority, despite all the advantages of incumbency. Moreover, given the rising Hispanic voter strength in this district, Hispanics have a realistic opportunity to elect a congressional candidate of their choice in upcoming elections. They have no such realistic opportunity in CD 23 under Plan 1374C.

B. The Fragmentation of Hispanics in the Area of the State Covered by Current and Proposed Congressional District 23 Is Intended to Deny Hispanic Voters the Opportunity to Participate Fully in the Political Process and to Elect Candidates of Their Choice to Congress

54. The design of Plan 1374C in the area of Congressional District 23 is intended to "crack" the Hispanic community, breaking off a significant component of Hispanic voter strength so that the remaining Hispanics in new CD 23 lack the opportunity to elect a congressional candidate of their choice. The drafters of Plan 1374C split Webb County in half to shift 52 percent of its population from CD 23 under Plan 1151C into CD 28 under Plan 1374C. This piece of Webb County cracked the Hispanic core of CD 23, removing 99,776 constituents who are more than 90 percent Hispanic in voting-age population, 91 percent Spanish surnamed in voter registration, and 86.5 percent Democratic as gauged by the 2002 statewide elections. In the 2002 general election, Bonilla won only 14 percent of the vote cast in this fragmented section of Webb County. This solidly Hispanic and Democratic constituency is replaced mainly by 101,260 constituents from CD 21 under Plan 1151C. This population is 76 percent Anglo and one of the staunchest Republican voting blocs in the state of Texas, voting 79 percent

Republican as measured by the 2002 statewide elections. The Hispanic population added to CD 28 does not enhance relative to Plan 1151C the opportunities for Hispanic to elect candidates of choice in that Congressional District. District 28 was already an effective Hispanic opportunity district under Plan 1151C, with a Hispanic voting-age population of 65.7 percent, a Spanish surname registration of 58.4 percent, and a 59 percent Democratic index as gauged by statewide elections in 2002.

Chart 2 - Trend in Spanish Surname Registration

Current Congressional District 23, 1996-2002

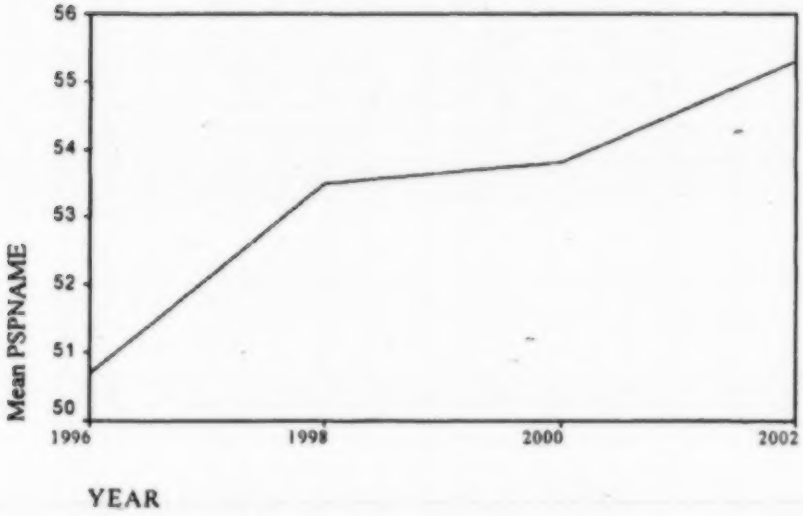
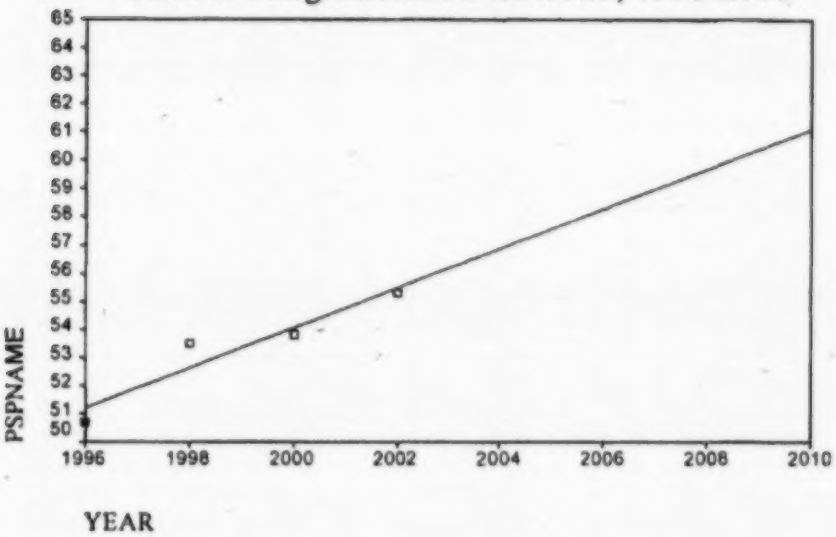


Chart 3 - Trend in Spanish Surname Registration

Current Congressional District 23, 1996-2010



55. The cracking of the Hispanic population in the region of CD 23 cannot be justified by reference to traditional nonracial redistricting goals such as geographic compactness, protection of communities of interest, preservation of jurisdictional lines, maintenance of the cores of existing districts, and protection of senior incumbents, all but one of which are undermined, not advanced, by Plan 1374C. The changes made in Congressional Districts 21, 23, and 28 do not produce major upheavals in geographic compactness, but on balance do result in districts that are less compact in Plan 1374C than in Plan 1151C. As indicated in Table 24, as compared to current Plan 1151C, Plan 1374C makes two of the three affected districts less compact. The compactness indexes reported in Table 24 show that Districts 21 and 28 are less compact on both measures in Plan 1374C as compared to Plan 1151C, whereas District 23 is more compact on the two measures. Overall, with respect to the three districts combined, Plan 1374C is about 25 percent less

compact on both measures. Thus, geographic compactness cannot be a justification for the cracking of the Hispanic population in CD 23.

Table 24

Congressional Districts 21, 23, and 28 under Plan 1151C and Plan 1374C
Comparison of Compactness Measures

	Plan 1151C Perimeter to Area	Plan 1374C Perimeter to Area	Plan 1151C Smallest Circle	Plan 1374C Smallest Circle
Congressional District 21	3.2	7.1	1.8	2.8
Congressional District 23	6.1	5.1	4.2	3.8
Congressional District 28	5.4	5.7	3.7	5.0
Mean	**4.9**	**6.0**	**3.2**	**3.9**

Source: *Texas Legislative Council, Report Package*. As indicated by the Council: Each measure is reported on a scale of 1 or greater, **with lower numbers being more compact.**

56. Plan 1374C also negates three other traditional, nonracial redistricting goals. First, it counteracts the preservation of communities of interest by splitting off Webb County residents who were well-integrated with the remainder of CD 23 and replacing them with predominantly Anglo populations from newly included counties who have little in common linguistically, historically, and socio-economically with the remaining core of CD 23. Second, the

splitting of Webb County and corresponding changes also make it more difficult to maintain the cores of existing districts. As indicated in Table 25, the mean core retention for these three districts is 64.6 percent, indicating that nearly 700,000 constituents in this area covered by these districts have been allocated to new congressional districts. Third, the cracking of the Hispanic community in CD 23 in Plan 1374C results in the splitting of more jurisdictional lines in Districts 21, 23, and 28 than Plan 1151C. Plan 1374C splits more counties and more municipalities than Plan 1151C for these three districts.

Table 25

Core Retention of Congressional Districts 21, 23, and 28 Change from Plan 1151C to Plan 1374C

District under Plan 1151C	Percent of Core Retained in Plan 1374C
District 21	65.8%
District 23	81.5%
District 28	46.5%
Mean	**64.6%**

57. The only redistricting goal advanced by the drafters of Plan 1374C in the three-district region analyzed is to protect the incumbency of Republican Representative Henry Bonilla in CD 23. As indicated above, the replacement of the heavily Hispanic, heavily Democratic population of Webb County with the heavily Anglo, heavily Republican

population from CD 21 transforms CD 23 under Plan 1374C into a solidly Republican district.

58. Again, it is surely true that the changes in CD 23 made by the drafters of Plan 1374C were part of an overall plan to deny Democrats opportunities to elect candidates of their choice. However, once again, minority voters were knowingly used as pawns in this process, thereby deliberately denying Hispanics opportunities to elect candidates of their choice. As already indicated, Bonilla was barely hanging on with 52 percent of the vote and minimal support from Hispanics in a district rapidly becoming more Hispanic in voter registration. Legislators were warned in public hearings by Dr. Gaddie, the Attorney General's expert, that Congressional District 23 "performed" for Hispanic voters in the most recent Hispanic-versus-Anglo general elections – the most relevant elections in this changing district. And they were warned by Dr. Gaddie that Representative Bonilla was not the Hispanic candidate of choice. Republicans crafting the congressional redistricting plans explicitly recognized that the only purpose for cracking the Hispanic community in Webb County was to guarantee Bonilla's reelection and prevent Hispanic voters from electing a candidate of their choice in CD 23. According to the *San Antonio Express News*:

> San Antonio Democrats were dealt a particularly heavy blow when a majority approved an amendment by Sen. Jeff Wentworth, R-San Antonio. His plan, approved by a four-vote margin, would delete a significant portion of Bexar County from the district [current CD 28] of U.S. Rep. Ciro Rodriguez, D-San Antonio, and replace it with a chunk of Webb County. . . . "In my judgment, it

> adds a few more people who traditionally vote Republican to Congressman (Henry) Bonilla's district, which helps him in his re-election in 2004," Wentworth said. "That was the principal motivation I had in offering the amendment."[25]

59. In addition, the pretextual nature of the state's justification for changes in the region of CD 23 is apparent from the contradictions between the written statement submitted to the Department of Justice and the accompanying statistical analyses. In his statement on behalf of the state, Andy Taylor asserted that "Congressman Bonilla receives up to 40 percent of the Hispanic vote in CD 23." But in support of this assertion, Mr. Taylor cites none of the State's statistical tables. Instead, he quotes the following exchange from Dr. Gaddie's testimony during the *Balderas* trial:

> Q. Assume with me that there is some prior testimony that he [Bonilla] gets about 40 percent of Hispanic votes on average. Does that sound about right to you?
>
> A. I've heard a figure like that, yes.
>
> Q. Does that suggest to you that cohesion among Hispanic voters in District 23 as it pertains to Congressional elections is low?

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[25] Guillermo X. Garcia and Peggy Fikac, "Senate Gives Initial OK to New Map," *San Antonio Express-News*, 24 September 2003, 1A.

A. Relatively low, yes.

Q. Relatively low. Is it one part of the candidate of choice analysis or one idea behind the candidate of choice analysis that you tend to see fairly overwhelming bloc voting among whatever particular group you are looking at.

A. Yes.[26]

60. That Bonilla wins "40 percent of Hispanic votes on average" in general elections is a myth. Although the state clearly had the capacity to analyze the general elections in CD 23 to estimate the Hispanic vote for Bonilla in recent elections, they fail to do so – despite presenting hundreds of other analysis. The state analyzes only one general election for Congress in CD 23 – the 1996 contest in which Bonilla received 62 percent of the overall vote, but according to the state's own findings only 29 percent of the Hispanic vote. Moreover, from 1996 to 2002 Bonilla's overall vote fell to 52 percent and his support from Hispanics declined. As indicated in Table 20 above, from 1996 to 2002 Bonilla received a mean of only 21 percent of the Hispanic vote – about half of the State's claim of 40 percent.

61. Mr. Taylor's memo also quotes Dr. Gaddie to support a claim that "Hispanics in Texas are increasingly voting Republican," with the implication that Hispanic support for Bonilla may even rise above the 40 percent level.[27] As shown above, this claim is incorrect as regards Mr. Bonilla in CD

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[26] Ibid., note 14, pp. 10-11.

[27] Ibid., p. 11.

23. His support from Hispanic voters has been steadily declining; in 2002 his percentage of the Hispanic vote was barely more than a fourth of the percentage he received in 1996. The state's claim about rising Hispanic support for Republicans is also refuted by the state's own analysis of statewide general elections in District 23 that include Anglo Republicans and Hispanic Democrats.[28] As indicated in Table 26, for this set of comparable general elections, the mean Hispanic vote for the Republican candidate declined sharply from 9.7 percent in 1996-1998 to 0.1 percent in 2002. There were no Hispanic-versus-Anglo statewide general elections in 2000.[29]

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[28] The state analyzed only statewide general elections with Hispanic and black candidates, although it inexplicably failed to included the election for Court of Criminal Appeals Place 1 in 2002 that included Hispanic candidate Molina. My own analysis of that election in CD 23 shows only 1 percent support for the Republican candidate.

[29] My own analyses confirm declining Hispanic support for Republican candidates.

Table 26

Ecological Regression Analyses Presented by State of Texas
Hispanic Votes for Democratic Candidate in Statewide General Elections in Congressional District 23
Comparison of 1996-1998 and 2002

Mean Percentage Hispanic Vote for Republican Candidates: Elections With Anglo Republicans and Hispanic Democrats	
General Elections, 1996-1998	General Elections, 2002
9.7%	0.1%

Source: Texas Section 5 Submission, Racially Polarized Voting Analysis, District 23, Plan 1151C. The analysis included the 1996 elections for U.S. Senator and Railroad Commissioner, the 1998 election for Land Commissioner, and the 2002 elections for Governor and Supreme Court Place 2.

C. The Loss of Hispanic Voter Opportunities in the Area Around Current District 23 Is Not Offset by Changes Elsewhere in Plan 1374C

62. The State of Texas in its Section 5 submission also claims to have created additional opportunities for Hispanic voters that could offset the lack of an effective minority

district in the area of CD 23. They point to the creation of proposed CD 25 as a new majority-Hispanic district which has sufficient Hispanic voter strength to provide Hispanics a realistic opportunity to elect candidates of their choice. And they point to alleged enhancements in CD 29 in the Houston area, as compared to comparable CD 29 under current Plan 1151C. However, Plan 1374C does not enhance Hispanic voter opportunities in CD 29. As compared to CD 29 under Plan 1151C, Plan 1374C does slightly raise the Hispanic VAP and Spanish surname registration, by about 3.5 percentage points. However, in terms of the performance measures in elections, as indicated in Table 27, CD 29 under Plan 1151C actually performs better for Hispanic voters than CD 29 under Plan 1374C. As indicated in Table 27 in five of six Hispanic-versus-Anglo Democratic primary or runoff elections, and in six of six general elections pitting a Hispanic Democrat against an Anglo Republican since 1996, the Hispanic candidate received a higher percentage of the vote in CD 29 under Plan 1151C, as compared to CD 29 under Plan 1374C. Moreover, although the Plan is crafted to remove incumbent Anglo Representative Gene Green from his prior electoral base in CD 29, it is likely that he would simply move back in and run again in a District that includes 81 percent of his previous base.

Table 27

Comparison of Congressional District 29 in Plan 1151C and Congressional District 29 in Plan 1374C Primary, Runoff, and General Elections with Anglo and Hispanic Candidates (Hispanic Democrats in General Elections)

Primary and Runoff Elections			
	Congressional District 29 Plan 1151C % for Hispanic Candidate	**Congressional District 29 Plan 1374C % for Hispanic Candidate**	**Plan With Higher % for Hispanic Candidates**
1996 Elections			
Senate (Primary)	53.8%	52.8%	1151C
Senate (Runoff)	60.4%	59.5%	1151C
1998 Elections			
Agriculture Commissioner	57.2%	54.1%	1151C
2002 Elections			
Senate	38.0%	38.5%	1374C
Land Commissioner	54.1%	53.5%	1151C
Agriculture Commissioner	65.7%	64.4%	1151C

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Primary and Runoff Elections			
	Congressional District 29 Plan 1151C % for Hispanic Candidate	**Congressional District 29 Plan 1374C % for Hispanic Candidate**	**Plan With Higher % for Hispanic Candidates**
General Elections			
1996 Elections			
Senate	62.5%	60.9%	1151C
Railroad Commissioner	58.6%	56.9%	1151C
1998 Elections			
Land Commissioner	59.3%	56.3%	1151C
2002 Elections			
Governor	67.5%	64.4%	1151C
Supreme Court, Position 2	69.3%	66.1%	1151C
Court of Criminal Appeals, Place 1	68.9%	65.8%	1151C

63. The drawing of CD 25 in Plan 1374C also results in the diminution of Hispanic voter opportunities in general elections in the area covered by existing CD 15. This area of the state is marked by racially polarized voting, especially in general elections, with Hispanic voter cohesion and Anglo bloc voting. In primary elections, Table 1 indicates that for the period from 1994 to 2000, in Hidalgo County, a portion

of which comprises most of current CD 15, a mean of more than 70 percent of Hispanic voters supported Hispanic candidates. Likewise in two Hispanic-versus-Anglo congressional primaries within CD 15, a mean of 67 percent of Hispanic voters supported the Hispanic candidates. For 2002 primary elections with Anglo and Hispanic candidates, the updated analysis in Table 28 indicates that a mean of 75 percent of Hispanic voters united behind Hispanic candidates. In general elections, Table 4 for Hidalgo County indicates that for the period from 1994 to 2000 a mean of 86 percent of Hispanic voters supported Democratic candidates. Likewise, as indicated in Table 28, when the analysis is updated to include the 2002 general elections with Hispanic Democratic candidates, a mean of 95 percent of Hispanic voters supported the Democratic candidates.

Table 28

Ecological Regression Estimates
Anglo v. Hispanic Primaries and General Elections in 2002
Current Congressional District 15

Primary Elections						
	Anglo Voters			Hispanic Voters		
District	**% for Anglo Candidate**	**% for Black Candidate**	**% for Hispanic Candidate**	**% for Anglo Candidate**	**% for Black Candidate**	**% for Hispanic Candidate**
US Senate	41%	31%	28%	22%	13%	64%
Agriculture Commissioner	70%	NA	30%	13%	NA	87%
Land Commissioner	70%	NA	30%	26%	NA	74%
Mean	60%	NA	29%	20%	NA	75%

General Elections				
	Anglo Voters		Hispanic Voters	
Election	**% for Democratic Candidate**	**% for Republican Candidate**	**% for Democratic Candidate**	**% for Republican Candidate**
Governor	22%	78%	94%	6%
Supreme Court, Position 2	25%	75%	96%	4%
Court of Criminal Appeals, Place 1	22%	78%	94%	6%
Mean	23%	77%	95%	5%

64. With respect to Anglo bloc voting in primary elections, the Hidalgo County results show that a slight majority of Anglos supported Hispanic candidates for the period from 1994 to 2000. However, this is not the case in Hispanic-versus-Anglo congressional primaries within CD 15. According to Table 3, a mean of 34 percent of Anglo voters supported Hispanic candidates in CD 15. Such Anglo bloc voting in primary elections also emerges in the 2002 updates, as Table 28 indicates that a mean of 29 percent of Anglo voters supported Hispanic candidates. In general elections, Table 4 indicates that in Hidalgo County 32 percent of Anglo voters supported Democratic candidates, a finding of Anglo bloc voting that is corroborated by recent general-election results reported in Table 28. In the 2002 general elections, a mean of 23 percent of Anglo voters supported Hispanic Democrats.

65. As compared to CD 15 in current Plan 1151C, CD 15 in Plan 1374C substantially reduces the Hispanic percentage of the voter turnout in general elections. According to results reported in Table 29, in CD 15 under Plan 1374C, the Hispanic percentage of general-election voters from 1996 to 2002 averages only 38 percent. This compares to an average of 52 percent in CD 15 under Plan 1151C, 14 percentage points higher. This creates a more precarious situation for Hispanic candidates of choice in general elections in CD 15 under 1374C, as compared to Plan 1151C.

Table 29

Hispanic Percentage of General-Election Voters
Congressional District 15
Plan 1151C and Plan 1374C

	Percent Hispanic in General Election Turnout	
Year	**Plan 1151C 74 Percent Hispanic VAP**	**Plan 1374C 64 Percent Hispanic VAP**
2002	53%	38%
2000	58%	43%
1998	43%	29%
1996	55%	43%
Mean	**52%**	**38%**

V. Plan 1374C Eliminate s Minority Influence Districts

66. Minorities in Texas have considerable influence over the election of Members of Congress in general elections, constituting a crucial vote in districts where the Anglo vote is closely divided, even in elections with incumbent candidates seeking reelection. As indicated in Table 30, these districts include CDs 1, 2, 4, 9, 10, 11, and 17, with combined

Table 30

Minority Influence Districts in Texas

Congressional District Under Current Plan	Combined Black Plus Hispanic Population Percentage	Combined Black Plus Hispanic VAP Percentage	Incumbent	NAACP Score	Hispanic Leadership Conference Scores
CD 1	23.8%	21.4%	Sandlin	83%	82%
CD 2	22.9%	21.2%	Turner	72%	73%
CD 4	21.4%	18.7%	Hall	33%	18%
CD 9	35.9%	33.0%	Lampson	83%	85%
CD 10	44.4%	39.2%	Doggett	89%	82%
CD 11	32.5%	28.7%	Edwards	78%	82%
CD 17	23.6%	20.5%	Stenholm	61%	60%

NAACP and Hispanic Leadership Conference Scores, 107th Congress, 2001-2002

Hispanic and black populations ranging from nearly 20 percent of voting-age population to nearly 40 percent. Taken together they include a combined minority population of more than one million persons. Although, with the exception of District 10, these congressional districts usually vote Republican in statewide elections, Table 31 shows that virtually unanimous support for Democratic congressional candidates from minority voters, along with ticket-splitting by Anglos, has resulted in the election of Democrats in

general elections. As indicated in Table 31, in every influence district in every 2002 congressional election, the Anglo vote was closely divided between Republican and Democratic candidates. As a result, minority voters have been able to elect Anglo Democrats who usually represent their interests even in otherwise heavily Republican districts.

Table 31

Ecological Regression Estimates*
2002 Congressional General Elections
Anglo & Minority Voting

District and Voter Group	Percent for Democratic Candidate
Congressional District 1	
Anglo Voters	47%
Black Voters	99%
Hispanic Voters	NA
All Voters	56%
Congressional District 2	
Anglo Voters	56%
Black Voters	100%
Hispanic Voters	NA
All Voters	61%
Congressional District 4	
Anglo Voters	55%
Black Voters	100%
Hispanic Voters	NA

District and Voter Group	Percent for Democratic Candidate
All Voters	59%
Congressional District 9	
Anglo Voters	51%
Black Voters	100%
Hispanic Voters	NA
All Voters	59%
Congressional District 10	Uncontested
Congressional District 11	
Anglo Voters	43%
Black Voters	NA
Hispanic Voters	NA
All Voters	52%
Congressional District 17	
Anglo Voters	49%
Black Voters	NA
Hispanic Voters	100%
All Voters	52%

* All Democratic candidates were Anglo incumbents. In District 11, given the lack of minority concentration in precincts, ecological regression analysis was not used. Anglo voting was estimated by totalling the votes cast in the numerous precincts where at least 90% of the voting-age population is Anglo.

67. In the three closest elections, in CDs 1, 11, and 17, where the percentage for the Democratic candidate was 56 percent or less, Table 31 indicates that the Republican candidate won the Anglo vote and thus the minority turned the elections in favor of their candidates of choice. As indicated in Table 30, every Anglo Democrat, with the exception of Hall, has an NAACP and Hispanic Leadership Conference rating of 60 percent or more, as compared to a mean NAACP rating of 24.8 percent and a mean Hispanic Leadership Conference Rating of 6 percent for Anglo Republicans in Texas.

68. These influence districts are dismantled under Plan 1374C, with minority voters reallocated to districts in which they will have little opportunity to elect candidates of their choice in general elections. With respect to representatives elected from the influence districts in Plan 1151C, Table 32 indicates that 5 of the 7 Democratic incumbents are reallocated to decidedly more Republican districts. All of these 5 new districts under Plan 1374C are heavily Republican, two of them also include Republican incumbents, and none of them retains even 50 percent of the representative's former constituents from Plan 1151C. Representative Edwards has been reallocated to a very slightly more Republican district, but one that includes only 35.2 percent of his previous constituents. Representative Hall, who has the lowest NAACP score, is the only Member reallocated to a more Democratic district, but one that is still heavily Republican and retains only a third of his previous constituents.

Table 32

Reallocation of Representatives from Influence Districts in Plan 1151C to New Districts in Plan 1374C

Congressional District in Plan 1151C	Incumbent	% Democratic Statewide-1996-2002	Congressional District in Plan 1374C	Incumbent	% Democratic Statewide 1996-2002	Difference in % Democratic	% Core Retained From Plan 1151C
1	Sandlin (D)	44.4%	1	Sandlin (D)	39.0%	-5.4	40.1%
2	Turner (D)	46.0%	6	Turner (D) Frost (D) Barton (R)	36.8%	-9.2	Turner: 4.4% Frost: 21.6% Barton: 66.4%
4	Hall (D)	34.6%	4	Hall (D)	40.5%	+5.9	33.9%

9	Lampson (D)	48.8%	2	Lampson (D) Green (D)	40.4%	-8.4	Lampson: 47.7% Green: 1.1%
10	Doggett (D)	57.2%	10	Doggett (D)	36.8%	-20.4	40.3%
11	Edwards (D)	39.0%	17	Edwards (D)	38.9%	-0.1	35.2%
17	Stenholm (D)	36.3%	19	Stenholm (D) Neugebauer (R)	32.3%	-4.0	Stenholm: 30.9% Neugebauer: 57.5%

VI. Turnout and Socio-Economic Differences for Anglos and Minorities

69. Data on general elections, which present a common base for comparison, show that for the period from 1996 to 2002, turnout rates for the Anglo voting-age population were substantially higher than turnout rates for the black and Hispanic populations. As indicated in Table 33, for 1996 to 2002, the mean, top-of-the-ticket turnout rate in general elections is 43 percent for Anglos, 32 percent for African-Americans, and 14 percent for Hispanics. The turnout rate for Hispanics remains well below the rates for blacks and Anglos even after adjusting for citizen voting-age population. These turnout differences are linked to socio-economic differences between Anglos and minorities that are documented in Table 34 for such standard socio-economic measures as education, income, poverty, unemployment, and availability of telephones and vehicles. Differences in socio-economic standing of the magnitude reported in Table 34 constitute not only a barrier to turnout, but more broadly restrict the relative resources required for full participation in the political process. Such resources include campaign finance and facilities; a recruitment base of well-educated candidates and campaign workers; and access to means of transportation and communication.

Table 33

Ecological Regression Estimates
General Election Turnout by Race
Top-of-the-Ticket, 1996-2002

Election	% of Anglo Voting-Age Population Voting	% of Black Voting-Age Population Voting	% of Hispanic Voting-Age Population Voting
1996 General	47%	36%	17%
1998 General	33%	24%	9%
2000 General	53%	40%	18%
2002 General	38%	28%	12%
Mean	**43%**	**32%**	**14%**

Table 34

Socio-Economic Statistics by Race and Ethnicity
2000 Census, Summary File 3

Measure	Anglos	Blacks	Hispanics
Percent Bachelor's Degree or Higher, Population 25+	30.0%	15.4%	8.9%
Median Household Income	$47,162	$29,305	$29,873
Per Capita Income	$26,197	$14,253	$10,770
Percent Persons Below Poverty	7.8%	23.4%	25.4%
Unemployment Rate, Civilian Labor Force	4.1%	10.5%	8.7%

Percent Households Without Telephones	1.7%	4.5%	6.4%
Percent Households Without Vehicles	4.5%	16.0%	10.8%

Conclusion

In several ways, proposed Plan 1374C has both the effect and the intent of impeding opportunities for minority voters in Texas to participate fully in the political process and to elect candidates of their choice to Congress. The Plan dismantles a majority-minority district in the Dallas/Tarrant region that, as acknowledged by the State's expert on voting rights, provides opportunities for black voters to elect candidates of their choice in both primary and general elections. It does so by intentionally fragmenting black voters and submerging them in overwhelmingly Anglo districts, subordinating traditional redistricting principles and making sure that these voters have no prospect of even influencing the election of congressional representatives. Plan 1374C likewise eliminates a Hispanic opportunity district in the area of current CD 23, leaving Hispanic voters in that region of the state submerged in a district in which they have no realistic prospect of electing a candidate of their choice to Congress. The plan achieves this end by intentionally splitting Webb County, with the result that about 100,000 largely Hispanic persons are excluded from the District, to be replaced by population from heavily Anglo counties. The Plan also dismantles seven districts across the state in which minority voters have significant influence over

the election of congressional representatives and reallocates the bulk of these voters to districts in which they have no such opportunities. Changes made to bolster the black concentration of a Houston area district (proposed District 9) may well have no practical impact on minority voter opportunities and the creation of a new majority-Hispanic district running from the Mexican border to Austin (proposed District 25) undermines Hispanic voting opportunities in neighboring District 15. On balance, the proposed Plan 1374C has significant, intentional, and detrimental effects on minority voter opportunities in Texas.

Dated: November 14, 2003

/s/
Allan J. Lichtman

Declaration of Ryan Robinson: Post-Census 2000 Demographic Change in Texas

The redrawn congressional districts of Plan 1374C by HB3 for the state of Texas are based on Census 2000 block-level population data; data that are now old and specious because of rapid and spatially uneven population surges and declines across the state, and additionally, due to changes in the sizes of ethnic groups—for the state as a whole and for communities within the state. It has been almost four years since the federal government conducted its decennial census, and in terms of demographics, a lot has changed in Texas since data sufficient to draw new districts were first made available on March 12, 2001.

Since April 1, 2000—the official Census day that all decennial census data are tethered to—the state of Texas has experienced enough population growth (almost a 1.0 million net gain as of July 1, 2002, according to the Census Bureau) to warrant the addition of two new congressional seats (based on an analysis by Election Data Services, a Washington consulting firm; please see link for Reapportionment Study at the company's web page electiondataservices.com/ home.htm). And here is where HB3 begins to foul out, demographically speaking. Now, in late 2003, the state's population growth since Census 2000 has easily exceeded 1.0 million persons because more than 16 months worth of additional growth has occurred since the Bureau's estimate of July 1, 2002. The redistricted HB3 map is based on old data that reflect a snapshot, a point along the state's growth trajectory that has long since passed.

Population growth comes from two basic sources, migration (the net difference between households moving into the state and households moving out) and natural increase, or the

difference between births and deaths. Currently, the state of Texas is experiencing rapid population growth from in-migration and from natural increase. According to the Census Bureau's 2002 population estimates program (please see Census.Gov.Popest.htm), Texas gets about half of its growth from in-migration and about half from natural increase. As the state continues to gain younger households in their prime child-bearing years and Hispanic families with their higher than average birth rates, Texas is poised to continue to grow enormously, even with attenuated in-migration levels.

Texas is receiving a substantial share of the nation's international immigration stream. Although the magnitude of this migration stream has diminished somewhat after the events of 9/11 and this nation's efforts to more effectively seal its borders, international immigration still contributes a substantial share to the state's overall population growth. This immigration stream is largely non-European, with major components from Asia and Latin America, and shows no sign of stopping anytime soon. Professor Stephan Klineberg at Rice University has outlined the structure of this immigration wave in recent works offered at: report.rice.edu.

The state's Hispanic share of total population is rising rapidly—increasing at an even faster rate during the past four years than it did during the 1990's. And herein lies another point of demographic perversion on the part of HB3—districts have been drawn under Plan 01374C using data that do not fully reflect the current size and spatial scope of the state's largest and most rapidly expanding minority community: Hispanics.

Because US congressional districts must be equal with each other in terms of total population size, the fact that the state

has grown markedly and spatially unevenly since April 1, 2000 means that the creators of the HB3 map would have to use current population information to achieve balanced districts. Because old data were used, the resultant districts are not balanced with each other in terms of population.

The enormous population growth that Texas has witnessed over the last three and a half years has not been homogenously spread across the state. Intra-state migration levels between cities and local household formation rates vary dramatically. Census Bureau estimates data reveal a highly uneven pattern of growth and localized decline. For example, looking at the Census Bureau's mid-year 2002 population estimates shows that the high-flyers of the past decade, places like Dallas and Austin, have seen a slow down in their growth rates, while urban areas like San Antonio (2.0% annualized) and El Paso (1.8% annualized) have taken over as the state's growth leaders (Census.Gov.Popest.htm).

The point here is that population growth is a spatially lumpy phenomenon, and using Census 2000 data to create congressional districts ensures that the districts will not be balanced with one another in terms of total population.

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I declare under penalty of perjury that the foregoing statements are true and correct. Signed this day, November 14, 2003.

Ryan Folmar Robinson
City Demographer, City of Austin

EXPERT REPORT OF RONALD KEITH GADDIE, PH.D.

Submitted for *Sessions v. Texas*

November 21, 2003

Introductory Statement and Credentials

My name is Ronald Keith Gaddie. I am a Professor of Political Science and Faculty Fellow in the Institute for Science and Public Policy at the University of Oklahoma in Norman, Oklahoma, where I also reside. I have served on the faculty of the University of Oklahoma since 1996. I was previously Research Assistant Professor of Environmental Health Sciences at the Tulane University School of Public Health and Tropical Medicine. Among the courses I teach at the University of Oklahoma are classes on American Politics, research methodology courses, elections and campaigns, and Southern politics.

I received my bachelor of science degree with major fields in political science and history from the Florida State University (1987), a master's degree in political science from the University of Georgia (1989), and a Ph.D. in political science from the University of Georgia (1993).

My principal research interests are in the areas of legislative elections; party competition and realignment; the impact of election laws, redistricting, and reapportionment on elections and voter participation; and the pursuit of political careers by politicians. My published research includes eight books, including Born to Run: Origins of the Political Career (Rowman and Littlefield, 2004); Elections to Open Seats In The U.S. House: Where the Action Is (2000, Rowman and Littlefield, with Charles S. Bullock, III); and The Economic Realities of Political Reform: Elections and the U.S. Senate. (1995, Cambridge University Press, with James L. Regens), and about 50 articles and book chapters in edited volumes, including American Politics Quarterly; Journal of Conflict Resolution; The Journal of Politics; Legislative Studies Quarterly; Social Science Quarterly; Political Research Quarterly; State and Local Government Review; and Women & Politics (a complete curriculum vitae accompanies this

report). I act as a peer reviewer of research for a variety of national and international academic journals and presses, and I am a member of the editorial board of Social Science Quarterly.

I have acted as an expert witness or litigation consultant in legislative redistricting and voting rights lawsuits in Georgia, Illinois, New Mexico, Oklahoma, South Dakota, Texas, Virginia, and Wisconsin and have been admitted as an expert in state and U.S. Federal courts. My most recent clients include the attorneys general of Virginia and Texas. In this matter, I have been hired by Andy Taylor of Andy Taylor and Associates, to act as an expert on behalf of the Attorney General of Texas. I am being compensated at a rate of $150.00 per hour for my work in this matter.

1. Introduction

The following is an overview assessment of the congressional district map passed by the Texas legislature this past October, HB 3 (1374C). The plan is evaluated on a variety of dimensions: the equality of distribution of population to guarantee one-person, one-vote; the division of traditional political units (counties); the compactness of districts in the plan; the treatment of Hispanic and African-American minorities; and the general competitiveness of the districts in the plan.

The map created in HB-3 enhances the strength of the Republican Party in Texas congressional elections by creating safe districts for both parties. In the process, the map displaces several incumbent Democratic congressmen. The map is superior to the 1991 legislature-enacted map on dimensions of plan compactness and the splitting of counties. The map maintains minority access through the creation of eight majority-minority Hispanic districts (seven of which should perform for Hispanic voters) and three districts of

over 45% citizen voting age population where black voters control both the Democratic primary and the general election by virtue of their turnout and cohesion.

2. One Person, One Vote.

The population of Texas in the 2000 census was 20,851,820. The state was allocated 32 congressional seats in the subsequent congressional reapportionment. The ideal district population is 651,619.375, or 651,619 with twelve whole persons left over.

The 32-district plan enacted by the federal panel in *Balderas v. Perry* created 20 districts with a population of 651,619 and twelve districts with a population of 651,620, with a population range of one. The same distribution of population is present in the map advanced in HB-3. This constitutes the most perfect distribution of population possible for a 32-district plan in Texas. The average deviation from the mean is .46875 persons, or less than .000001% of the ideal population. All population figures are based on the 2000 census.

3. Splitting Counties.

Counties are creatures of the state. They can be created, consolidated, or eliminated. Despite the shrinking autonomy of counties in an expanding federal system, counties are still strong sources of political and social identity, and county lines have historically been considered in the crafting of legislative boundaries. Redistricting plans in the early 1990s in a variety of states, including Texas, were criticized from a variety of quarters for extensively dividing counties with relatively low populations, often as part of an effort to craft majority-minority districts. The Texas congressional plan of 1996 was the residual of such an effort, dividing thirty-three of 254 Texas counties among two or more congressional districts.

Six of those divisions are unavoidable, due to the very large populations of Bexar, Dallas, El Paso, Harris, Tarrant, and Travis counties. These counties have populations greater than the ideal population of a congressional district, therefore they will necessarily be divided. Other divisions may be made for political reasons, or to satisfy the desire for perfect population apportionment in the redistricting plan.

The *Balderas* court map reduced the number of county divisions from the previous legislative map, dividing 23 counties into more than one congressional district, including the six major urban counties. The divided counties are Bastrop (14, 21), Bexar (20, 21, 23, 27), Brazoria (14, 22), Collin (3, 4, 26), Dallas (3, 5, 24, 30, 32), El Paso (16, 23), Fort Bend (22, 25), Garza (13, 17), Harris (7, 8, 18, 22, 25, 29, 31), Hays (14, 21), Hidalgo (15, 28), Hunt (1, 4), Kaufman (4, 5), Kleberg (15, 27), Lamb (13, 19), McLellan (5, 11), Montgomery (2, 8, 9), Nacagdoches (1, 2), Nueces (15, 27), Tarrant (6, 12, 24, 26), Travis (10, 21), Williamson (11, 31), and Wise (17, 26).

The map created in HB-3 divides 28 counties into more than one congressional district, including the six major urban counties. The divided counties are Archer (13, 19), Bastrop (10, 15), Bexar (20, 21, 23, 28), Brazoria (14, 22), Burleson (10, 17), Cameron (15, 27), Cass (1, 4), Collin (3, 4), Comal (21, 28), Cooke (13, 26), Dallas (3, 5, 24, 26, 32), Denton (24, 26), El Paso (16, 23), (Fort Bend (9, 14, 22), Galveston (14, 22), Harris (2, 7, 9, 10, 18, 22, 29), Hays (21, 28), Hidalgo (15, 25), Liberty (2, 8), Limestone (6, 17), Nolan (11, 19), Robertson (17, 31), San Patricio (15, 27), Sutton (11, 23), Tarrant (6, 12, 24, 26), Trinity (6, 8), Travis (10, 21, 25), and Webb (23, 28). This number is an increase over the *Balderas* court map, though it is still fewer county divisions than have been present in the previous, legislature-crafted congressional map for Texas used in the 1992 and 1994

elections..

4. Compactness.

Two measures of compactness were applied to districts in plan 1034C: the Perimeter-to-Area measure and the Smallest Circle score. These measures were regularly offered in post-*Shaw* litigation of the 1990s. In the metric used by the Texas Legislative Council to measure compactness, high scores indicate less-compact districts. The two principle scores used are:

> ***Perimeter-to-Area*** (PTA) measure compares the relative length of the perimeter of a district to its area. It is represented as the ratio of the area of a circle with the same perimeter as the district to the area of the district.
>
> ***Smallest Circle*** (SC) scores measure the ratio of space in district to the space of the smallest encompassing circle: a value of one indicates perfect compactness and is achieved if a district is a circle.[1]
>
> The average Perimeter-to-Area score for the *Balderas* court map is 5.065, with a median PTA score of 4.650 (see Table 1). The average Smallest Circle score for the plan is 2.750, with a median Smallest Circle score of 2.600 (see Table 2).

The map in HB-3 has an average Perimeter-to-Area score of 6.416, with a median PTA score of 6.550 (see Table 1). The average Smallest Circle score for HB-3 is 3.516, with a median Smallest Circle score of 3.100 (see Table 2).

Overall, the new congressional map is less compact than the previous, court-drawn map. But, as indicated by the data

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[1] These definitions are the same as those found on the Texas Legislative Council website.

in Tables 1 and 2, it is more compact than both of the previous two congressional maps crafted by and adopted by the state legislature of Texas on the perimeter-to-area score, and more compact on average than the 1991 map on the Smallest Circle score (see Tables 1 and 2).

5. Minority Districts

The map in HB-3 creates eleven districts which either have racial or ethnic majorities, or in which minority voters exercise control over election outcomes. Eight of these districts are Hispanic-majority voting age population districts, and three of these districts have African-American populations which constitute over 45% of the citizen voting age population. Seven of the eight Hispanic districts (all but district 23) and all three African-American districts should perform for the predominant minority group in primaries and general elections. Summary population data on Hispanic population for each district appears in Table 3; population data for the African-American districts appears in Table 4.

District 15

District 15 in HB-3 includes 60.0% of the population of district 15 in the *Balderas* court map. The district has a 64.0% Hispanic voting age population (58.5% citizen VAP), and a Spanish surname voter registration level of 56.7%.

The district is generally a Democratic district. Republicans did attain 49.8% of the weighted two-party composite vote in the district boundaries in 2000, but the GOP 2002 composite vote was 44.3% (these data for all districts appear in Table 5). Hispanic voters constituted an estimated 81.9% of the Democratic primary voter turnout in 2002, and between 37.5% and 39.1% of the voter turnout in the 2002 general election.

Hispanic voters generally elect their candidates of choice

within the boundaries of the district. An examination of thirteen statewide primary and general elections featuring minority and Anglo candidates since 1996 revealed that the Hispanic candidate of choice prevailed in seven of seven primaries and five of six general elections. The one loss occurred when 37% of the Hispanic vote supported a Hispanic Republican over an Anglo Democrat. The only statewide Republican candidate to carry this district in 2002, Comptroller Carole Rylander, ran five percentage points ahead of any other Republican statewide, taking 66% of the state vote. She narrowly carried District 15.

District 16

District 16 is unchanged from the configuration advanced in the Balderas court map. The district continues to be 74.8% Hispanic voting age population, 69.9% citizen VAP, and with a 67.5% Spanish surname voter registration level. The district is Democratic according to the composite election measures. The Hispanic candidate of choice won in all thirteen statewide primaries and elections examined.

District 20

HB-3 creates a San Antonio-based district 20 which is largely based on the district 20 from the *Balderas* court map. The district retains 85.2% of the previous district 20. The Hispanic voting age population is 63.6% of total, and the citizen VAP is 60.8%; Spanish surname voter registration is 59.9% of total.

The district is Democratic, with an average 2000 GOP statewide composite vote of 42.9%, and average 2002 GOP composite vote of 37.7%, and a 2002 GOP lieutenant-governor vote share of 36.9%. Hispanic voters are estimated to have constituted between 53.1% and 54.7% of the 2002 general election turnout in the district, and 86.1% of the voter turnout for the 2002 Democratic primary in the district.

The Hispanic candidate of choice carried the district in all thirteen statewide elections examined (seven of seven primaries and six of six general elections).

District 23

HB-3 creates a 50.9% Hispanic voting age population district 23. The district is 45.8% Hispanic citizen VAP, and 44.0% Spanish surname registered voters. The district retains 81.5% of the old district 23.

The district as designed is a generally Republican district. The 2000 GOP statewide composite vote is 63.5% (56.8% for 2002), and Republican David Dewhurst carried the district with 51.3% of the vote. Hispanic voters account for an estimated 32.0% to 34.5% of the 2002 general election turnout, and 91.5% of the Democratic primary turnout. Hispanic candidates of choice won all seven statewide primaries examined in the district, but none of the six Hispanic candidates of choice in general elections carried the district. In the six contested statewide Democratic primaries and 15 contested statewide general elections in 2002, Hispanic candidates of choice prevailed within the new district in six of six primaries but none of 15 general elections.

While the district allows for Hispanic control of the Democratic primary, it has become a more Republican district, and should become safer for Hispanic Republican Henry Bonilla, who has not been the candidate of choice of Hispanic voters. District 23 derives from a district which did not consistently perform for Hispanics before 2002.

District 25

District 25 is a new, safely Democratic Hispanic majority district. The district is 63.4% Hispanic VAP (55.0% citizen VAP) and has a 55.6% Spanish surname voter registration.

The district draws roughly a quarter of its population from old district 15, a quarter from old district 28, and about two-fifths from old district 10 in Travis County.

The district is safely Democratic. The 2000 GOP statewide composite is 37.8% (30.2% in 2002), and Republican David Dewhurst managed just 27.5% for lieutenant-governor in the district. Between 46.4% and 51.1% of the estimated 2002 general election turnout is Hispanic, and 74.6% of the 2002 US senate primary turnout within the district was Hispanic.

Hispanic candidates of choice carried seven of seven statewide primaries and six of six statewide general elections involving candidates of different ethnicity or race. In the 2002 contested statewide Democratic primaries and statewide general elections, Hispanic candidates of choice prevailed in five of six primaries and all 15 general elections.

District 27

HB-3 creates a district 27 which retains 86.6% of the district 27 from the *Balderas* court map. The district is 64.2% Hispanic voting age population (60.4% citizen VAP), and has a 58.0% Spanish surname voter registration.

The district appears to be generally Democratic. The GOP 2000 statewide composite is 49.7%, though the GOP composite for 2002 is lower, 44.4%, and the Republican lieutenant-governor carried 41.3% of the vote inside the district. Voter turnout was estimated at 40.2% to 42.3% Hispanic in the 2002 general election, and 71.8% Hispanic in the 2002 US Senate primary. Hispanic candidates of choice won seven of seven statewide primaries and five of six statewide general elections involving candidates of different ethnicity or race.

District 28

The district 28 created in HB-3 retains 46.5% of the core from the previous district 28 of the *Balderas* map; old districts 23 and 14 provide much of the new population. The district is 60.1% Hispanic voting age population (56.2% citizen VAP) and has a 54.3% Spanish surname voter registration.

The district is Democratic in its partisanship. The GOP 2000 statewide composite is 48.6% (but 41.1% for 2002) and the Republican lieutenant-governor carried just 38.3% of the vote in the district. Hispanics are estimated at between 45.1% and 47.9% of the 2002 general election turnout, and 87% of the 2002 Democratic primary turnout.

Hispanic candidates of choice carried a majority in all seven statewide primaries and all six statewide general elections involving candidates of different ethnicity or race.

District 29

HB-3 maintains district 29 in Harris County, but as an open seat. Anglo incumbent Democrat Gene Green is no longer resident in the district. The new district includes 80.6% of the district 29 from the *Balderas* court map. The district is 61.8% Hispanic voting age population (46.7% citizen VAP), and has a Spanish surname voter registration of 45.9%.

The district is Democratic in its voting. The GOP 2000 statewide composite is 42.4%, and in 2002 the composite is just 35.8%; the Republican candidate for lieutenant-governor, David Dewhurst, pulled 35.5% of the vote in the district in 2002. Hispanics are estimated to provide between 39.5% and 41.9% of the general election turnout in the district in 2002, and 74.4% of the US Senate primary election turnout that year. Hispanic candidates of choice carried six of seven

statewide primaries and six of six statewide general elections involving candidates of different ethnicity or race.

District 9

HB-3 creates district 9, in Harris and Fort Bend counties. It is something of a successor to the previous district 25, containing 46.5% of that district and also portions of district 7 (34.0%), district 18 (12.0%), and district 22 (7.5%). The district population is 36.5% African-American voting age population, 30.3% Hispanic voting age population (46.9% African-American citizen VAP and 16.6% Hispanic citizen VAP) with 13.7% Spanish surname voter registration.

This is a very safe, Democratic district. The GOP 2000 statewide composite vote for the district is 32.8% (30.2% in 2002) and the Republican candidate for lieutenant-governor polled 29.0% of the vote in the district in 2002.

It is a district which will be controlled by African-American voters and which will elect African-American candidates of choice. Black voters accounted for 97% of the Democratic primary turnout in 2002, and are estimated to have been between 68.8% and 69.3% of the general election turnout in the district in 2002.

African-American candidates of choice prevail in the district, clearly carrying seven of seven statewide primaries and six of six general elections in the district involving candidates of different race or ethnicity. In the 2002 statewide primaries and general election, the preferences of black voters prevailed in the district in all six contested statewide primaries and all fifteen statewide general elections.

District 18

HB -3 continues a successor to the historic district 18 in Harris County. The district contains 78.8% of the previous

district 18 from the *Balderas* court map, and 18.9% of the previous district 29. The district population is 40.3% African-American voting age population (48.6% African-American citizen VAP) and 32.2% Hispanic voting age population (19.7% Hispanic citizen VAP) with 16.0% Spanish surname voter registration.

This is a safe Democratic district. The GOP 2000 statewide composite vote for the district is 28.4% (26.0% for the 2002 composite) and the 2002 Republican candidate for lieutenant-governor received 25.0% of the vote.

This district will likely be controlled by African-American voters and will elect African-American candidates of choice. Black voters constituted an estimated 61.9% to 62.4% of the general election turnout in 2002, and 80.7% of the turnout for the 2002 Democratic US Senate primary.

In thirteen statewide elections featuring candidates of different race or ethnicity, the African-American candidate of choice prevailed inside the district in seven of seven Democratic primaries and six of six general elections. In 2002, black candidates of choice prevailed in four of six contested statewide Democratic primaries within the district (the two losses occurred under circumstances where the African-American vote appears to have narrowly divided) and African-American candidates of choice prevailed inside the district in all fifteen statewide general election contests.

District 30

District 30 in HB-3 is an African-American district in Dallas county. The district continues a district which has existed since 1992, and in its current configuration retains 73.7% of the previous district 30 from the *Balderas* court map. The district is 41.3% African American by voting age population (48.6% African-American citizen VAP) and 30.7% Hispanic voting age population (14.2% Hispanic

citizen VAP) with a Spanish surname voter registration of 12.5%.

Like districts 9 and 18, this is a safe, Democratic district, if not the most Democratic district in the congressional map. The GOP 2000 statewide composite is 26.6% (22.7% for the 2002 composite) and the Republican lieutenant-governor received 21.5% of the vote in the district in 2002.

African-American voters will likely control the primary and election in this district. African-Americans are estimated to provide between 65.7% and 66.0% of the 2002 general election turnout, and 85.1% of the 2002 Democratic US Senate primary turnout.

In thirteen statewide elections featuring candidates of different race or ethnicity, African-American candidates of choice prevailed with a majority in five of seven primaries, and six of six general elections (the two instances where black preferences did not prevail with majorities were in 1998, and featured low cohesion among black voters, compared to other, similar elections). In 2002, African-American candidates of choice prevailed within the district in all six contested statewide Democratic primaries, and in all fifteen statewide general elections.

Comparison of Performance of *Balderas* District 23 and HB-3 District 25

HB-3 includes a new congressional district (25) that enters the Rio Grande valley. The result is a new, seventh majority Hispanic congressional district in South Texas, whereas the *Balderas* court map created six such districts. As I noted in my discussion above, the district 23 of the *Balderas* court map was an inconsistent performer at best. In 2002 Hispanic candidates of choice did prevail in 13 of 15 statewide general elections in the district and six of six statewide primaries. But, from 1996-2002, in thirteen statewide elections

featuring candidates of different ethnicity or race, the Hispanic candidate of choice prevailed in all seven primaries, but just two of seven general elections. And, since 1992, district 23 and its predecessors have elected a congressional candidate who is not the candidate of choice of Hispanics. The revised district 23 has even less prospects of electing the Hispanic preference.

The new Hispanic-majority congressional district, 25, holds out greater prospects to perform than either version of district 23. The district had, in 2002, an estimated Hispanic share of general election turnout of 46% to 51% in the US Senate and governor's contests, compared to rates of 41.3% and 44.0% in the old district 23. Hispanic candidates of choice prevailed in all seven statewide primaries and all six statewide general elections featuring candidates of different ethnicity or race. Hispanic candidates of choice carried five of six statewide Democratic primaries in 2002, and all fifteen general elections.

District 25 should perform for Hispanic voters, and is a more-effective district for Hispanic voters than the previous district 23. The new district 23 likely does not perform for Hispanic voters.

6. Partisanship and Competitiveness in HB-3 (Plan 1374C)

Assessing the impact of changes to the existing congressional plan requires placing that plan in proper context. Those who have written about gerrymandering have generally agreed that the Texas congressional plan for the early 1990s was a very effective partisan gerrymander (Beachler 1998). In 1992, Democrats polled 51.1% of the congressional vote in Texas but won 70% of the seats (Murray and Attlesey 1999, 321). Since 1992, Republicans have steadily gained vote share in Texas congressional

elections, but, despite commanding a clear majority of votes, cannot translate those votes into a majority of seats.[2]

The 1996 redistricting in response to *Bush v. Vera* affected less than half of the state. Still, Democrats continued to retain the lion's share of Texas' congressional seats, even as the state continued to trend toward the Republican party in statewide and state legislative elections (Lamare, Polinard and Wrinkle,1998). The most recent congressional map, crafted by a Federal panel and derived from the 1996 map, produced an outcome where Republicans garnered a majority of the two-party congressional votes (54.9%), but Democrats won a majority of the congressional seats (17 of 32).

The new map is an effort to shift the balance of the congressional delegation of the state to reflect the Republican party's preeminence in state politics, as reflected in not just the congressional vote shares, but also the results of statewide elections (all of which have recently been won by Republicans) and state legislative elections which in 2002 were dominated by Republicans. To that end, the plan increases the number of districts where Republicans have an electoral advantage, displaces Democratic incumbents, either by pairing them together or with Republican incumbents in Republican-leaning districts, and creating open seats which constitute Republican opportunities.

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[2] Prior political science research indicates that single-member district systems typically pay a "bonus" of seats to the party winning the majority of votes; change is not 1:1 in translating seats into votes. Redistricting, especially partisan redistricting, attempts to maximize the return of seats for votes, further contributing to this phenomenon. Texas has a history of the majority party seeking to enhance its representative power through redistricting.

Competitive districts.

Competition is important to students of elections because it is widely believed that competition is central to the health of a democratic system. To that end, the competitive nature of electoral districts is important because competitive districts should encourage strong candidacies in both parties and healthy voter interest in campaigns.

Competitive, or marginal, districts have been identified using two thresholds. David Mayhew (1974) established 55% of the vote as the division between a marginal and a competitive election. He noted that, at mid-century, legislators who lost reelection had often won their previous election effort with less than 55% of the vote. Mayhew observed a decline of these marginal districts in the 1960s, and cautioned of implications from declining competitive incumbent elections and of the isolating of congressional turnover into the open seats.

More recent research has shifted the division between competitive and non-competitive elections to 60% of the vote (Jacobson, 1987; 1997) as the 55% threshold proved to have less of a relationship with subsequent incumbent defeat.

The challenge of analyzing competitiveness across congressional district plans arises from attaining an appropriate baseline. In Texas in 2001, the *Balderas* court used a form of the normal vote measure, reconstituted statewide elections within proposed congressional districts, to baseline and compare the partisanship of the congressional map. This approach is widely accepted by the experts involved in this matter, and it is the approach used here to facilitate comparison.

Using reconstituted elections from 2000 and 2002 (see Table 5) to examine the *Balderas* court map reveals the presence of between 6 and 10 safe Democratic districts,

between 2 and 5 marginal Democratic districts, one marginal Republican district, and between 12 and 19 safe Republican districts, using a 55% threshold for party safety (see Table 6). When a broader 60% threshold is applied, the result is between 3 and 7 safe Democratic districts, between 5 and 8 marginal Democratic districts, between 2 and 4 marginal Republican districts, and between 16 and 19 safe Republican districts (see Table 6).

By comparison, the HB-3 map creates between 7 and 10 safe Democratic districts, between none and 3 marginal Democratic districts, no marginal Republican districts, and 22 safe Republican districts, using a 55% threshold for party safety. Applying the broader 60% threshold, the result is between 4 and 7 safe Democratic districts, between 3 and 6 marginal Democratic districts, none or one marginal Republican districts, and 21 or 22 safe Republican districts (see Table 6).

Overall, using either the 2000 or 2002 composite vote, the number of Democratic leaning districts falls from 11 or 12 to 10, while the number of Republican leaning districts increases from 21 to 22. Using the 2000 composite vote and a 45-55% definition of competitive/marginal district, the number of marginal districts changes from 6 in the *Balderas* court map to 3 in the map created by HB-3. Using the 2002 vote composite and the 45-55% definition of competitive/marginal, the change is from 3 marginal districts to 0. Using the broader definition of marginality (the 40-60% band) and the 2000 vote composite indicates that there are ten marginal districts under the *Balderas* court map, and six such districts under the HB-3 map. Using the 2002 composite, the number of marginal districts changes from 9 to 4.

Competitive Balance and Responsiveness

As I described above, the *Balderas* court map and the HB-3 map contained an advantage for Republicans according to the statewide composite vote in 2000 and 2002. The HB-3 map eliminated many marginal districts, creating more and safer Republican districts and fewer and safer Democratic districts.

Table 5 contains data from the 2002 lieutenant-governor's contest, broken out by district for the *Balderas* Court map and the map created by HB-3. The lieutenant-governor's race was the closest statewide contest in 2002, and was won by Republican David Dewhurst with 52.9% of the two-party vote. The similarly-close 1998 lieutenant-governor contest was a popular benchmark for evaluating maps at trial in 2001, and it is a useful baseline for the purpose of evaluating HB-3 in comparison to the *Balderas* court map. District-level data on this contest appear in the last two columns of Table 5. Then, in Table 6, I break out the districts by competitiveness, based on the GOP two-party vote share for lieutenant-governor. As indicated by the figures in Table 6, the number of marginal districts using the 45%-55% definition of competitive/marginal is four districts under the *Balderas* court map (two each Republican and Democratic leaning), and the number falls to three such districts (all Republican) in the HB-3 map. The number of safe Republican districts increases from 16 in the *Balderas* court map to 19 in the HB-3 map, and the number of safe Democratic districts is reduced from 12 to 10.

Using the broader band of marginality (40% to 60%), the number of marginal seats increases from 11 in the *Balderas* court map to 15 in the HB-3 map. The number of GOP marginal districts increased from 6 to 14, while the number of Democratic marginal districts changed from 5 in the *Balderas* Court map to 1 in the HB-3 map. The number of

safe Republican districts changes from 12 to 8, while the number of safe Democratic districts is unchanged at 9 in both maps. Overall, the number of Democratic-leaning districts is reduced from 14 to 10.

HB-3 is not especially responsive to small changes in the voting baselines. Using the 2002 lieutenant-governor's contest – again, the Democrats' best statewide showing – as a baseline, responsiveness can be measured as the number of seats won by each party as the share of the two-party vote won by the GOP increases and decreases in one percentage point increments above and below the actual vote. This analysis was performed by first measuring the two-party vote share for lieutenant-governor within each congressional district, and ascertaining how many districts were carried by each party. Then, the vote in each district was increased (or decreased) at one-percent increments from the observed vote, representing a 1 percentage point change from the statewide average (a similar analysis appears in Professor Alford's report). This analysis was performed for both the new map and for the baseline *Balderas* court map. The responsiveness of the *Balderas* court map and the HB-3 map appear in Figure 1.

Figure 1 presents the plot of the seats won by Republicans based on the lieutenant-governor's race vote share in the district against the statewide vote share, for both maps. Based on the actual vote share, 52.9% Republican, Republicans won the majority of the vote in 18 districts, while Democrats carried the vote in 14 districts. When that vote share is increased by one percentage point across all districts, Republicans pick up an additional seat, for 19, and when the vote share is increased by another one percentage point, an another seat is gained. This seat share – 20 seats, or 62.5% of seats– holds through increases to at least 57.9% of the vote, or +5% per district. The districts similarly respond

in the other direction; initial reductions of the GOP vote share of minus one-percent and minus two-percent result in corresponding seat shifts; 50.9% of the GOP vote results in half of the seats for each party. An additional reduction of four points in the GOP vote share, to 46.9% of the vote, is required to drop the GOP seat share below half, and another two point reduction to 44.9% of the vote is required to elicit another seat shift to the Democrats. It is at two points in the distribution – at 43.9% or less of the vote for the GOP, and around 51% of the vote for the GOP – that we see Democrats winning seats out of proportion to vote share.

The HB-3 map creates a more pronounced Republican advantage in the map design. At any value for Republican vote share above 51.9% statewide, Republicans carry 68.75% of seats, or 22 of 32. Below 51.9% of the vote share, Republican seat share falls off with vote share, though it is only at 45.9% of the vote for the GOP or less (54.1% Democrat or more) that Democrats win a majority of the seats in the HB-3 map. A very efficient distribution of Republican votes exists in the map.

Open Seats and Incumbent Pairings

The map contains four instances of incumbent pairings and five open seats. Open seats are important to turnover in the U.S. House of Representatives. Since the 1970s, two-thirds of new members of Congress were initially elected in open seats (Gaddie and Bullock 2000). Open seats have about a one-in-three chance of switching party from the departing incumbent. Those districts are important in the election of women and ethnic and racial minorities, because the creation of the open seat eliminates the incumbent and her/his advantages. Typically open seats only occur due to death, resignation, retirement, or pursuit of higher office. In redistricting years, these seats also occur because states are allocated a new seat in reapportionment, or because map-

makers choose to pair incumbents. Such pairing most often happens when a state loses seats in reapportionment, but pairing also happens when there is no change in the number of seats in a state and even when a state gains representatives. While losing a seat necessitates pairing, it need not produce any open seats.

Four incumbent pairings occur in the HB-3 map (see Table 7). These occur in district 2 (Green and Lampson), district 6 (Barton, Turner, and Frost), district 7 (Bell and Culberson), and district 19 (Neugebauer and Stenholm). Of the nine paired incumbents, six are Democrats. Table 7 shows the partisanship of the new districts with paired incumbents, the incumbents paired in the new district, the partisanship of their old district, and the proportion of their old district they carry into the new district. All four districts are Republican districts which voted between 57% and 64% for Republican David Dewhurst for lieutenant-governor in 2002. Of the paired Democrats, four came from safe Democratic districts (less than 45% for Dewhurst), while one came from a district that voted less than 51% Republican for lieutenant-governor and the other (Stenholm) represented a safe, Republican district.

A total of five open seats are created by HB-3, assuming that incumbents choose not to relocate to run (see Table 8).[3] These open seats include districts 9, 25, and 29 which are safely Democratic constituencies with large minority constituencies, and districts 11 and 24, two new open, safely Republican districts in West Texas and the Dallas-Fort Worth metroplex, respectively. The three safely Democratic open seats are ones in which minorities will be especially well

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[3] For example, Representative Lloyd Doggett (D-10) has announced that he will seek reelection in the new district 25 should HB-3 be implemented

positioned to elect their preferred candidate with district 9 likely to elect the preference of a united African-American electorate while Hispanics, if cohesive, should be able to elect their preference in districts 25 and 29.

Incumbent Core Retention

In Table 9, data on incumbent core retention is presented. Incumbent core retention measures the percentage of the district the incumbent is placed in, that comes from the incumbent's previous district. As indicated in the table, the map results in an average core retention for all incumbents of 51.76%; the average differs by party, with Republican incumbents retaining over 61% of their old constituency cores, on average, while Democrats retained about 43% of their old constituency cores.

7. Summary

This, in sum, is a map that was designed by the Republican state legislature to advantage Republicans in congressional elections in the state of Texas. The map creates ten Democratic districts and twenty-two Republican districts; disrupts numerous Democratic incumbents from their constituencies; and pairs many Democratic incumbents in Republican districts with Republican incumbents. The map contains eight Hispanic-majority congressional districts and three congressional districts with over 45% African-American citizen voting age population.

The map does create more Democratic than Republican open seats, but does so by displacing Democratic incumbents. It is possible for the minority party to prevail in a majority of districts. The circumstances under which the Democrats might prevail would require either a dramatic increase in the Democratic vote statewide, relative to the recent performance of that party in Texas or Democratic congressional candidates who run well ahead of their party's

recent performance. On the basis of a relatively even division of the vote statewide, the map exhibits a decided Republican advantage in the underlying partisanship of most districts.

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TABLE 1: PERIMETER MEASURES OF CONGRESSIONAL DISTRICT PLANS

DISTRICT	1992P	1000C	Balderas	HB-3
1	6.29	7.30	5.3	3.8
2	7.25	8.60	5.9	8.8
3	21.74	5.50	3.5	5.7
4	9.62	10.60	8.9	4.7
5	8.93	8.50	6.3	7.1
6	40.00	37.50	2.8	7.2
7	7.81	4.00	2.7	5.7
8	10.42	11.40	3.7	4.3
9	9.43	5.20	4.7	6.8
10	3.08	3.20	2.1	7.0
11	3.10	3.20	3.5	4.0
12	16.67	16.90	1.9	2.2
13	5.38	5.40	2.7	5.0
14	9.62	9.80	4.6	6.9
15	7.69	7.90	8.5	11.6
16	4.65	4.70	3.8	3.8
17	2.62	2.60	2.7	5.9
18	90.90	6.60	8.5	8.9
19	6.17	6.20	4.3	6.4
20	7.69	8.10	7.1	7.3

DISTRICT	1992P	1000C	Balderas	HB-3
21	10.63	11.00	3.2	7.1
22	12.19	9.50	7.1	9.8
23	5.59	5.80	6.1	5.1
24	13.89	9.70	6.1	7.5
25	47.62	10.60	11.8	9.6
26	7.04	4.70	2.7	6.7
27	4.72	4.60	4.1	5.1
28	6.06	6.20	5.4	5.7
29	125.00	5.60	7.7	8.6
30	62.50	5.60	4.7	4.0
31	.	.	6.7	4.1
32	.	.	3.0	8.9
N	30	30	32	32
Mean	19.1433	8.2167	5.065	6.416
Median	8.3700	6.4000	4.650	6.550
Minimum	2.62	2.60	1.90	2.20
Maximum	125.00	37.50	11.80	11.60
Sd	28.0768	6.3296	2.345	2.116

TABLE 2: SMALLEST CIRCLE MEASURES OF CONGRESSIONAL DISTRICT PLANS

DISTRICT	1992P	1000C	Balderas	HB-3
1	2.71	2.70	2.3	2.2
2	1.86	1.80	1.9	4.3
3	3.47	3.10	1.7	2.4
4	4.15	4.00	4.9	2.5
5	3.17	3.10	2.5	3.0
6	4.76	4.80	1.9	4.4
7	2.99	3.40	1.9	2.6
8	3.13	3.00	2.9	2.2
9	3.40	2.50	2.5	3.7
10	2.32	2.30	1.9	4.2
11	2.43	2.40	2.1	3.1
12	2.64	2.60	2.0	1.8
13	2.87	2.80	2.9	3.1
14	2.70	2.60	2.0	3.9
15	5.21	5.10	5.0	6.5
16	5.10	5.10	2.9	2.9
17	2.45	2.40	2.0	4.4
18	2.78	2.90	2.8	2.2
19	5.08	5.00	2.9	3.4
20	3.01	3.00	2.9	3.0

DISTRICT	1992P	1000C	Balderas	HB-3
21	4.52	4.50	1.8	2.8
22	2.55	2.40	2.4	3.4
23	4.31	4.20	4.2	3.8
24	2.95	2.90	3.1	3.4
25	5.08	4.40	4.4	8.5
26	2.40	2.40	1.8	5.2
27	3.51	3.20	3.1	3.1
28	3.85	3.80	3.7	5.0
29	5.15	2.60	2.8	3.1
30	4.12	2.60	2.7	2.3
31	.	.	3.8	3.2
32	.	.	2.3	2.9
N	30	30	32	32
Mean	3.4890	3.2533	2.750	3.516
Median	3.1500	2.9500	2.600	3.100
Minimum	1.86	1.80	1.70	1.80
Maximum	5.21	5.10	5.00	8.50
Sd	1.0142	.9479	0.906	1.357

TABLE 3: DATA ON HISPANIC VAP AND SPANISH SURNAME REGISTRATION

	VAP	VAP	CitizenVAP	CitizenVAP	SSVR	SSVR
DISTRICT	Balderas	HB-3	Balderas	HB-3	Balderas	HB-3
1	6.0	7.5	3.3	3.9	2.0	2.9
2	7.7	11.3	5.2	8.1	3.3	6.7
3	12.9	15.3	7.5	8.4	5.9	6.3
4	7.7	6.7	4.1	3.9	3.1	2.7
5	15.3	11.1	9.3	7.0	7.2	5.3
6	11.7	13.9	8.5	8.8	7.3	7.1
7	23.3	16.0	14.0	10.4	11.4	8.4
8	11.6	8.0	7.8	5.2	7.1	4.0

	VAP	VAP	CitizenVAP	CitizenVAP	SSVR	SSVR
DISTRICT	**Balderas**	**HB-3**	**Balderas**	**HB-3**	**Balderas**	**HB-3**
9	12.9	30.3	9.7	16.6	8.5	13.7
10	29.0	16.8	21.9	12.0	18.9	9.1
11	14.1	25.3	11.6	21.8	9.5	19.3
12	17.1	20.4	11.7	13.7	9.5	11.3
13	17.9	14.6	14.8	11.8	11.9	9.4
14	28.4	22.1	25.4	18.7	20.3	14.0
15	**74.3**	**64.0**	**69.3**	**58.5**	**67.0**	**56.7**
16	**74.8**	**74.8**	**69.9**	**69.9**	**67.5**	**67.5**
17	16.6	13.1	14.5	9.8	12.1	7.6
18	29.1	32.2	17.8	19.7	14.2	16.0
19	29.6	24.8	26.8	22.9	24.2	19.9

	VAP	VAP	CitizenVAP	CitizenVAP	SSVR	SSVR
DISTRICT	Balderas	HB-3	Balderas	HB-3	Balderas	HB-3
20	**64.3**	**63.6**	**61.6**	**60.8**	**61.5**	**59.9**
21	15.2	16.2	13.6	14.8	11.4	12.9
22	18.0	18.3	15.2	15.1	12.8	12.9
23	**63.0**	**50.9**	**57.4**	45.8	**55.3**	44.0
24	33.6	15.8	20.8	10.8	18.0	8.8
25	30.7	**63.4**	18.6	**55.0**	15.2	**55.6**
26	10.0	12.5	7.0	7.8	5.3	5.8
27	**67.5**	**64.2**	**63.5**	**60.4**	**61.6**	**58.0**
28	**65.7**	**60.1**	**61.4**	**56.2**	**59.6**	**54.3**
29	**58.2**	**61.8**	42.8	46.7	42.5	45.9
30	27.7	30.7	14.2	15.5	11.4	12.5

	VAP	VAP	CitizenVAP	CitizenVAP	SSVR	SSVR
DISTRICT	**Balderas**	**HB-3**	**Balderas**	**HB-3**	**Balderas**	**HB-3**
31	14.9	14.2	11.6	12.0	9.1	9.9
32	24.1	31.4	11.0	16.1	8.3	13.3

VAP and Citizen VAP figures are from the 2000 census; Spanish Surname Voter Registration is from the 2002 election cycle.

TABLE 4: BLACK ACCESS DISTRICTS, HB-3

District	BlackVAP, *Balderas* Map	Hispanic VAP *Balderas* Map (SSVR)	Black VAP, HB-3	Hispanic VAP, HB-3 (SSVR)
18	42.1%	29.1% (14.2%)	40.3%	32.2% (16.0%)
30	40.3%	27.7% (11.4%)	41.0%	30.7% (12.5%)
9			36.5%	30.3% (13.7%)

TABLE 5: GOP COMPETITIVENESS IN DISTRICTS FOR THE *BALDERAS* COURT MAP AND HB-3

		2000	2000		2002	2002		'02LGV	'02LGV
DISTRICT		**Balderas**	**HB-3**		**Balderas**	**HB-3**		**Balderas**	**HB-3**
1		60.9	64.9		58.1	63.0		51.3	55.1
2		59.0	61.6		56.4	60.6		50.9	57.2
3		73.3	71.1		72.4	70.0		67.3	65.2
4		68.5	64.2		68.1	63.0		62.4	58.0
5		60.8	64.9		59.6	64.2		55.1	58.6
6		66.2	65.6		65.2	64.1		60.4	58.7
7		68.7	70.2		69.2	70.2		64.2	64.0

		2000	2000		2002	2002		'02LGV	'02LGV
DISTRICT		Balderas	HB-3		Balderas	HB-3		Balderas	HB-3
8		77.7	67.0		78.6	66.6		74.6	62.8
9		53.9	32.8		52.2	30.2		48.9	29.0
10		46.6	66.0		40.0	63.5		32.9	56.4
11		64.6	71.7		62.8	69.8		58.1	61.5
12		66.4	63.6		66.3	63.0		61.3	58.0
13		71.9	71.0		69.4	68.9		62.5	62.3
14		63.2	62.5		60.2	61.0		49.3	52.7
15		46.0	49.8		38.3	44.3		35.8	39.3
16		42.8	42.8		35.6	35.6		38.4	38.4
17		68.6	64.5		67.2	64.0		58.2	58.6
18		26.5	28.4		24.8	26.0		23.6	25.0

		2000	2000		2002	2002		'02LGV	'02LGV
DISTRICT		Balderas	HB-3		Balderas	HB-3		Balderas	HB-3
19		73.3	72.1		70.5	69.0		63.7	60.1
20		44.0	42.9		38.5	37.7		37.5	36.9
21		72.5	66.9		70.8	63.8		61.4	54.7
22		68.1	67.2		67.0	65.9		62.5	61.7
23		58.3	63.5		47.5	56.8		42.8	51.3
24		46.1	69.1		41.9	67.6		39.4	63.2
25		49.2	37.8		48.5	30.2		44.4	27.5
26		74.0	62.4		74.2	62.4		69.6	58.9
27		48.9	49.7		43.3	44.4		40.9	41.3
28		41.0	48.6		35.2	41.1		33.9	38.3
29		39.4	42.4		32.7	35.8		32.5	35.5

		2000	2000		2002	2002		'02LGV	'02LGV
DISTRICT		**Balderas**	**HB-3**		**Balderas**	**HB-3**		**Balderas**	**HB-3**
30		31.5	26.6		27.1	22.7		25.8	21.5
31		70.3	67.3		69.3	65.1		61.5	58.5
32		66.4	65.5		65.9	64.3		59.0	57.6

The data in first two sets of columns are based on the weighted average of the GOP vote share for all statewide contested contests; the data for the last pair of columns is the two-party vote share for the 2002 Lieutenant-Governor's race.

TABLE 6: COMPETITIVE DISTRICTS

Mayhew Marginals

	Safe Rep.	Competitive Rep.	Competitive Dem.	Safe Dem.
'00 Statewide				
Balderas	20	1	5	6
HB-3	22	0	3	7
'02 Statewide				
Balderas	19	1	2	10
HB-3	22	0	0	10
'02 Lt. Governor				
Balderas	16	2	2	12
HB-3	19	3	1	9

Assumes a district is competitive at between 45% and 55% of the vote.

Jacobson Marginals

	Safe Rep.	Competitive Rep.	Competitive Dem.	Safe Dem.
'00 Statewide				
Balderas	19	2	8	3
HB-3	22	0	6	4
'02 Statewide				
Balderas	16	4	5	7
HB-3	21	1	3	7
'02 Lt. Governor				
Balderas	12	6	5	9
HB-3	8	14	1	9

Assumes a district is competitive at between 40% and 60% of the vote.

TABLE 7: INCUMBENT PAIRINGS IN HB-3

District	GOP Vote LtGov '02	Incumbent	GOP Vote LtGov '02, Old District	Core Retention
2	57.2%	Green (D)	32.5%	1.1%
		Lampson (D)	48.9%	47.7%
6	58.8%	Barton (R)	60.4%	66.4%
		Turner (D)	50.9%	4.4%
		Frost (D)	39.4%	21.6%
7	64.0%	Bell (D)	44.4%	18.8%
		Culberson (R)	64.2%	51.8%
19	60.1%	Neugebauer (R)	63.7%	57.5%
		Stenholm (D)	58.2%	30.9%

TABLE 8: OPEN SEATS

District	GOP LtGov'02	GOP 2000 Comp.	GOP 2002 Comp
9	29.0	32.8	30.2
11	61.5	71.7	69.8
24	63.2	69.1	67.6
25	27.5	37.8	30.2
29	35.5	42.4	35.8

TABLE 9: INCUMBENT CORE RETENTION

District	Incumbent	Core Retention	District	Incumbent	Core Retenti on
1	Sandlin (D)	40.1	17	Edwards (D)	7.4
2	Green (D)	5.5	18	Jackson-Lee (D)	78.8
	Lampson (D)	1.1	19	Neugebau er (R)	57.5
3	Johnson (R)	80.8		Stenholm (D)	30.9
4	Hall (D)	33.9	20	Gonzalez (D)	85.2
5	Hensarling (R)	62.5	21	Smith (R)	65.8

District	Incumbent	Core Retention	District	Incumbent	Core Retention
6	Barton (R)	66.4	22	DeLay (R)	70.4
	Turner (D)	4.4	23	Bonilla (R)	81.5
	Frost (D)	21.6	26	Burgess (R)	50.9
7	Bell (D)	18.8	27	Ortiz (D)	86.6
	Culberson (R)	51.8	28	Rodriguez (D)	46.5
8	Brady (R)	38.9	30	Johnson (D)	73.7
10	Doggett (D)	40.3	31	Carter (R)	31.0
12	Granger (R)	79.8	32	Sessions (R)	52.3
13	Thornberry (R)	88.3			
14	Paul (R)	43.7		Mean	51.76%
15	Hinojosa (D)	60.0		Mean Dem.	43.22%
16	Reyes (D)	100.0		Mean GOP	61.44%

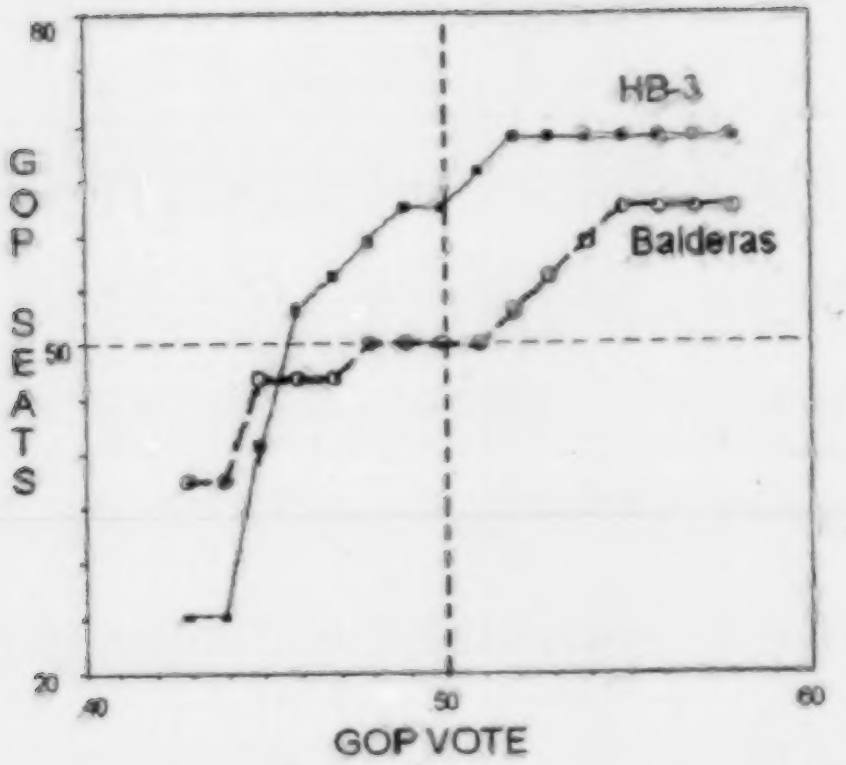

FIGURE 1: Seats-Votes Relationship, Balderas Court Map and HB-3 Map, Based on '02 Lieutenant-Governor Race Vote (Dewhurst v. Sharp, 52.9%-47.1%)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WALTER SESSIONS, ET AL	)
	)
VS.	) Civil Action No.
	) 2:03-cv-00354
	)
RICK PERRY, ET AL	)

****

THE ORAL DEPOSITION OF KEITH GADDIE
NOVEMBER 22, 2003

* * * *

Page 8

(Deposition began at 10:26 a.m.)

KEITH GADDIE,

the witness, having been previously duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, testified on his oath as follows:

EXAMINATION

BY MR. SMITH:

Q. Could you state your full name?

A. Ronald Keith Gaddie.

Q. And where are you employed?

A. I'm on the faculty of the University of Oklahoma in Norman, Oklahoma.

Q. And have you been retained in this litigation to appear as an expert witness for the State of Texas?

A. Yes.

* * * *

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Q. Let's focus in a little bit again on the

issue of African-American access. You said already, I think, that in District 24 in the current Map

Page 32

1151, African-Americans are in control of Democratic primary; is that right?

A. Where?

Q. In District 24 in 1151.

A. Yes. Yes.

Q. What is your estimate of the percentage of the voters in the Democratic primary in that district who are African-American?

A. I don't believe I have the exact number in front of me. But it should be a number -- It is a majority of the voters.

Q. Is it typically well over 60 percent?

A. I was going to say, I believe it's above 60 percent but not above 70.

Q. Is it also your understanding that the African-American candidate of choice in that district is consistently elected in the general election?

A. Yes. The Democratic nominee is consistently elected in the general election.

Q. So would you consider District 24 in the current map a district in which African-Americans access the political process?

A. Yes.

Q. Now, you also used a term in your report.

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The term is "perform." Look at Page 7, for example. You're describing minority districts. And you say,

"Seven of the eight Hispanic districts and all three African-American districts" -- This is in 1374.

A. Yes.

Q. -- "should perform for the dominant minority group in primaries and general elections." As you use that term, does District 24 in the current map perform for African-Americans?

A. As I use that term, yes.

Q. Okay. So it is not your professional judgment that a district has to have an African-American majority to perform?

A. Yes.

Q. Mr. Hebert thinks there may be ambiguity in that answer. It is not your assessment, in other words, they don't have to have the majority; is that correct?

A. Restate the whole question. It will make us clear --

Q. African-Americans do not have to have a majority of the district in order for the district to perform for them; is that correct?

A. That's correct.

* * * *

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Q. Can you give me an example of any occasion when African-Americans in the existing 24 were unable to have their candidate of choice elected in

Page 40

a general election?

A. Not from my analysis, no.

Q. Do you have an estimate of the percentage of the voters in general elections in current 24 who

are African-American?
A. I have, but it's not in my report.
Q. I didn't ask you that. I just asked you what it is.
A. If I may refer to my documentation.
Q. I would appreciate it.
A. Thank you. 32.8 percent.
Q. And can you give us the -- the other figures for who's in that general election electorate for District 24?
A. You want the anglo and Hispanic shares?
Q. That's correct.
A. All right. Well, again, there are two different estimates here because the turnout figures are not identical for the U.S. Senate and for Governor. Would you like both?
Q. Yes, please.
A. Okay. For U.S. Senate, the turnout is 61.6 percent anglo, 32.8 percent African-American, 5.6 percent Hispanic. For the gubernatorial race, it is 60.6 percent anglo, and 32.5 percent

Page 41

African-Americans, 6.9 percent Hispanic. So anglo voters make up a solid majority of the voter turnout in the district.

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Page 44

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Q. So it's fair so say your understanding of the line-drawing strategy that was pursued in that part of Texas was that they wanted to make District 23 into a safer seat for Mr. Bonilla? And in order to do that, they felt the need to draw an

additional Hispanic majority district that would perform for Hispanics somewhere else in the state; is that right?

A. Bonilla had polled, I think, less than 23 percent of the voting to get him re-elected. My understanding there was a desire to bolster support for him in his ability to be re-elected. Because that district would become much more Republican, there would have to be compensation somewhere else. Yes.

Q. Did you ever draw any other comparisons between Hispanic districts in 1151 and Hispanic districts in the new proposed map?

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A. In my report? Or --

Q. No, in general.

A. In the process in general? When I would receive a map to examine, I would examine the ability of that district to perform based upon this analysis, which we were pulling information from before, the set of multiracial or multi-ethnic candidate races, for races that were most likely to show racial polarization in Texas and ascertain how often those districts performed on the basis of minority voters.

So one thing I would do is look at the existing district and see to what extent minority population had changed and see if the district had fallen off as a performer for minority voters.

Q. Now, did you ever -- Specific question I asked you was: Did you ever compare districts in 1151 and districts in 1374, the map as passed, old

15 versus new 15, for example, or old 27 versus new 27?
A. Yes.
Q. When did you do that? When did you do that?
A. Well, back in October, at the time that HB3

was advanced, in my reaction to Mr. Taylor, I would indicate the extent to which I thought the districts were performing compared to previous districts. The -- This would typically entail looking at --
Q. Yes.
A. I'm sorry.
Q. That's okay. I'm listening.
A. The -- This would entail looking at the reconstituted elections, looking at the polarization analysis, seeing how often candidates of choice won under this set of elections.
Q. And can you recall anything about the conclusions that you drew in your comparisons of the old and new versions of the other Hispanic majority districts in South Texas?
A. The other Hispanic districts would perform, yes.
Q. Did you conclude that they would be more marginal than they are in their current version?
A. They would become a bit more competitive, some of them, yes. But they still appear to be performing minority voters.
Q. Now, District 15, referring to Page 8 of your report, is the district in which the estimate that you got was that as re-drawn, it will have

Page 47

between 37.5 percent and 39.1 percent of the voter turnout in the general elections, Hispanics?
A. Yes. That's true.
Q. And can you tell me why you nevertheless concluded that as re-drawn it would be a performing district?
A. Because candidates of choice were being elected in the general election and in the primary.
Q. And can you tell me as it previously existed, was -- did the Hispanic share of the voter turnout in that district exceed 50 percent?
A. Could you please repeat the question? I didn't catch the first half of what you said.
Q. District 15, as it existed in the current map, do the Hispanics get more than half of the voter turnout in the general elections in that district?
A. Yes, they do.
Q. So that district has been changed from one in which Hispanics have unilateral control in the general elections to one in which they have to count on coalitions of others in order to have their candidate of choice elected. Is that true?
A. Yes.

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Q. Let me ask you some questions about the next phase of your report, then. You have some discussion of history here when we talk about partisanship going back to the early 1990s. And you refer to the fact that at the top of Page 17 that "The most resent congressional map," meaning the

23 Balderas map, "produced an outcome of Republicans
24 garnering a majority of the vote. The Democrats won
25 the majority of the seats." Do you see that?

Page 52

1 A. Yes.
2 Q. Is it your opinion that the Balderas map is
3 biased in favor of the Democrats?
4 A. No.
5 Q. Is it your opinion that the Balderas map
6 favors the Republicans?
7 A. Maybe slightly.
8 Q. And what is your explanation for the fact
9 that the Democrats won 17 congressional districts in
10 the 2002 election?
11 A. Incumbency.
12 Q. And is it fair --
13 A. And the maintenance of the residual of the
14 old map.
15 Q. Is it fair to say that 1374 is designed to
16 overcome the incumbency advantages of the Democrats
17 by adding additional bias to the map and eliminating
18 the core constituencies of key Democratic
19 incumbents?
20 MR. TAYLOR: Objection; form.
21 THE WITNESS: The HB3 map, Map
22 1374, does disrupt the relationships between
23 Democratic incumbents and their constituencies. It
24 does create more and more safer Republican districts
25 and a set of very safe Democratic districts, yes.

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1 Q. (By Mr. Smith) Does it add bias to the map

relative to the bias that you identify in favor of Republicans in the Balderas map?

A. Yes.

Q. Do you have a prediction of how many seats the Republicans would win in the 2004 elections if the HB3 map is allowed to go into effect?

A. Yes. This is in my report in the section that we're discussing and also represented in Figure 1 of my report, which is a representation of the seat's vote curve.

Q. What is your prediction of how many seats will be carried by the Republicans in 2004?

A. Again, that depends upon the amount of the vote. Actual --

Q. It certainly does.

A. Yeah. I already told you, I want to make sure that I give you a completely correct answer.

Q. I appreciate that.

A. Yeah. Yeah. The -- Again, this number is not determinative and definitive. But let's make a couple of assumptions. We'll assume no incumbency effect. Okay? We'll assume the distribution of the votes throughout the state. It looks like the lieutenant governors vote, which is 52.9 percent

Page 54

Republican statewide. That would result in about 68 percent of congressional seats going to the GOP.

Q. Okay. Now, have you done any analysis of the 32 districts and the likely outcome in 2004 taking into account incumbency effects and the way in which 1374 responds to those incumbencies and effects?

A. No.

Q. Do you have any judgment sitting here today of whether the Republicans would, in fact, be able to carry 22 districts in 1374 in the next election?
A. Based upon a systematic analysis, no.
Q. How about not based on a systematic analysis? What's your best judgment?
A. There will be Republican gains from this map. How incumbents, such as Chet Edwards or Charles Stenholm, might perform in the new districts relative to their incumbency effects, I can't say. But they receive districts that are -- They already represent very Republican districts, would run again in very Republican districts.

Given the incumbency effects, the ability to raise money, I don't think the Republicans can sweep 22 seats, but I think the Republicans do make gains. Any number would be a

Page 55

guess. But the pick-up would probably be in the neighborhood of three to four seats rather than seven.
Q. Now, you do identify in your report that there are 22 Republican seats in the Map 1374; is that right?
A. Yes.
Q. And you also refer to the concept of safe seats repeatedly.
A. Yes.
Q. Can you tell me, are there any of those 22 districts which you would describe as not being safe Republican seats?
A. Again, this depends upon the baseline we use to make the assessment. The data which this

analysis will be based on is in Tables 5 through 6, which is probably around Page 27 or 28 of the report.

Under the HB3 map, if we use either of the composites to estimate competitive districts using a 45 to 55 percent range for competitive district, there are -- there are no competitive Republican districts in the map and 22 safe Republican districts. If we use lieutenant governors vote, it is 19 safe Republican districts,

Page 56

three competitive Republican districts.

Q. But the lieutenant governor's vote, as we established before, is the high-water mark for the Democratic performance in recent elections; is that right?

A. Yes. I would say it's an indicator of the most competitive baseline. So it reflects an open-seat circumstance, assuming two highly competitive circumstances, sufficient financing, most competitive circumstance, this is our best guess of the vote.

Q. But you wouldn't, sitting here today, think that's a good way to actually appraise the competitiveness of any particular district in that race?

A. No. We look at multiple indicators. It gives us an indication of the performance of the district under its most competitive circumstances.

Q. Of those 22 Republican districts, can you tell me which district is the least safe for the Republicans?

A. Do you mean the least Republican? Or the

least safe for the Republicans?
Q. Can you explain to me what the difference between those two is?

Page 57

A. Well, if you ask me what the least Republican district is, that's District 30 in Dallas.
Q. No. Of the 22 Republican seats.
A. Oh, okay. This will take a moment. Which baseline did you want to refer to, please?
Q. Whichever one you think is appropriate.
A. What we'll do is look at the most competitive baseline, which is the lieutenant governor's race, and then we'll make comparison to the 2002 composite. Among the safe districts using the lieutenant governor's base baseline, the least safe of the safe districts is District 1 at 55.1 percent. If we use the 2002 composite, it's District 23 at 56.8 percent.

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Q. (By Mr. Smith) Okay. So let me take you through what you actually did here. Referring to the HB3 line, you took the lieutenant governor's race in 2002 in which the Republican candidate got approximately 53 percent of the vote. And you said at 53 percent of the vote, how many seats did -- in the new map do Republican's carry. And that came out to what?
A. It comes out to 68.75 percent of the seats.
Q. Is that 22 seats?
A. That sounds right, yes.

Q. Okay. And then you said, "Let's subtract and add one percent of the vote from each of the candidates in each of the districts," is that right?
A. Right.
Q. So you said, "How many seats do the Republicans carry if we -- instead of giving Dewhurst 53 percent of the vote, we subtract one percent at every district"?
A. Right.
Q. Okay. And you found that at 52 percent of the vote, done that way, they still get 22 seats?
A. Yes.

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Q. And then you found that at 51 percent of the vote, the Republicans carry 21 districts; is that right?
A. I think that's right, yes.
Q. And you found that at 50 percent of the vote, the Republicans carry 20 seats?
A. Let me check that. I think that's correct. The -- The reactiveness of the curve is discussed -- Here we go.
Yeah. This is all discussed on Page 21 of my report, and the full paragraph begins Figure 1 where I start off by discussing the Balderas map and how it reacts. The reactivity of the HB3 map is in the paragraph that begins at the bottom of the page and continues to Page 22. But, yes, that should be a fall-off from 20 -- to 22 to 21 to 20.
Q. Okay. So at 50 percent, you're saying they get 20 out of the 32 districts?
A. Yeah.

Q. Okay. And the same is true at 49 percent?
A. Uh-huh.
Q. And that at 48 percent, the Republicans carry 19 of the districts; is that right?
A. I think that's correct, yes.

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Q. Okay. And just for the record, at what percentage of the votes do the Republicans no longer carry half the seats in Plan 1374?
A. When they drop below 45.9 percent of the vote.
Q. Okay. Just for the record, what you found about the Balderas plan is that in a 50/50 statewide election, you would expect that each party would carry about half the seats?
A. Yes.
Q. Now, you have some discussion about open seats in -- on Pages 22 and 23.
A. Yes.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WALTER SESSION, ET AL	*	Civil Docket No.
	*	2:03-CV-354
VS.	*	Austin, Texas
	*	
RICK PERRY, ET AL	*	

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE PATRICK E. HIGGINBOTHAM
U.S. CIRCUIT JUDGE
AND
THE HONORABLE T. JOHN WARD
AND
THE HONORABLE LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGES

* * * *

December 11, 2003, 1:00 p.m. Session

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Page 117 [Charlie Gonzalez]

* * * *

Q. Several years ago you testified before this Court that there is a big difference between Hispanic citizen voting age population and what actually happens on election day, Hispanic turnout. Does that difference persist today?

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A. Unfortunately, it does.
Q. As a practical matter, what does that fact of

life have to do with the creation of Districts where Hispanics can elect a candidate of their choice?

A. What I would imagine, during the course of this trial you'll have a lot of figures bandied about, and it will be based on raw numbers, and raw numbers don't mean anything to the minority community.

If you just go with population figures. What's the Hispanic population of any particular area? That really doesn't translate to having an effective voice or ability to elect someone of your choice, because then you still have -- and I'm going to do this again, and I know that the lawyers are prepared for it this time, but this is something that political scientists did.

And what he does in his class, basically he holds up a piece of paper and he says, this is the entirety of the Hispanic population in Texas, for instance. And it looks good. It should be a powerful block of votes or whatever it is. But let's take voting age population. And so, now you fold in it half. Take citizenship, too, because in these numbers with the census -- and I'm not telling you everybody is a citizen, because we count non-citizens. We are not allowed to ask

during the census, citizenship. And then what you do after that is you go into registered voters, how many of the voting age population that are citizens are registered voters. Then you fold it again.

What really counts, though, is the next vote, and that is election day. What is the percentage of the Latino or Hispanic vote on election day of that registered number that show up, and that's when you fold it again. And that is probably more realistic. So

that's what you end up with.
And, I mean, it is -- this is a metaphor.
I'm trying to always tell people, you know, it's like
when you draw something, it's not to scale, well, this is
the same thing.

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Page 152 [Allan Lichtman]

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JUDGE HIGGINBOTHAM: My question is why --
I thought you were telling me that Lloyd Doggett would

Page 153

represent an Anglo candidate taken the -- taking that
District at the price of a choice of the Latinos.
THE WITNESS: I think that's quite
likely. As I said, he could pick up somewhere between 40
percent to the high 40s of the Latino vote.
JUDGE HIGGINBOTHAM: What kind of Latino
support has he had in his current District?
THE WITNESS: I think he has had a recent
significant Primary, in General Elections, of course, he
has had overwhelming Latino support. I may have his
Latino score. Let me look at that. I don't think he's
had a significant Primary. If you will give me a moment,
I have a table with scores on it.
JUDGE HIGGINBOTHAM: I thought he had
roughly the same scores.
THE WITNESS: 82 percent. So, his score
is very high on Hispanic leadership conference. He's got
a lot of money. He's an incumbent. I think a very --
and, you know, the Hispanic community, as Representative
Gonzalez pointed out, is kind of very geographically
split. It's at either end of this District with a big,
very long bridge in between them, and therefore, again,

in the totality of circumstances of the plan, because they're doing contradictory things, they're trying to protect Bonilla, they're trying to create a new Hispanic

Page 154

opportunity District, but they are also trying to eliminate Doggett, and those are incompatible objectives. And I think the sacrifice here will be Hispanics will lose 23 as a viable opportunity District. May well lose 25 as a realistic opportunity District because of its geographic configuration, and because of what's done to target Doggett, and at the same time haven't gotten to this yet, he substantially weakened current Congressional District 15 as Representative Gonzalez testified to and as the numbers show.

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JUDGE ROSENTHAL: You talked a little bit about expanding the prior witness' testimony about the effect of the new lines on existing Districts 27, 28 and 15.

THE WITNESS: I think I focused only on 15.

JUDGE ROSENTHAL: That's my point, in part. And you talked about the contrast between a minority opportunity District and a minority influenced District.

THE WITNESS: Yes.

JUDGE ROSENTHAL: Would you characterize the extent of the weakening of any or all of these

Page 167

Districts as moving them from the category of minority opportunity District to the category of merely a minority influenced District.
THE WITNESS: Not in 27 or 28. You come close in 15. I wouldn't say -- I certainly would not say it becomes only a minority influenced District, that's not right, but it moves it closer.
JUDGE ROSENTHAL: But you would -- by your answer, you would agree, then, that they stay in the category of minority opportunity Districts.
THE WITNESS: Yes. But with 15 pushed at the edge of that.
JUDGE ROSENTHAL: Thank you.

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December 12, 2003, 9:30 a.m. Session

Page 82 [Allan Lichtman]

* * * *

Q. Let's explore a little bit more about District 24 in Plan 1151C. You would agree with me, would you not, that there's not any cohesion between Black and Hispanic voters in that District in the Primary, correct?
A. What I said was that they do not share the same candidate of choice, that's right. Doesn't mean there isn't any crossover.
Q. Now, focusing on the General Election, minorities are cohesive in supporting Democrats because

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party affiliation unites Hispanic and African-Americans, isn't that true? Because otherwise they're really not cohesive in General Elections?
A. Presuming you understand party affiliation the

way I explained it. It has a history, and it has issues behind it, mathematically, that's certainly correct.

Q. Well, in fact, that was the answer that you gave two years ago in the Balderas case when one of the three judges asked you, isn't it?

A. It's the answer I've given every time.

* * * *

December 12, 2003, 3:00 p.m. session

Page 4 [Ron Kirk]

* * * *

Q. (By Mr. Hebert) Could you give the Court a little background about you, were you were born, educated?

A. I'm a lifelong resident of Texas. I was born right here in Austin, Texas in 1954. I was educated in Austin public schools, attended Austin College in Sherman, Texas, in which I did see cows and cattle guards. I came back to the University of Texas School of Law and received my law degree in 1979 and moved to Dallas then. Worked in private law practice and went to Washington with Senator Lloyd Bentsen, moved back to Texas in 1983, resumed my law practice.

Page 5

Q. And you presently live in the Dallas area; is that correct?

A. Yes, sir.

Q. And could you tell the Court a little bit about your political activities, basically starting from the earliest stage --

A. I was born --

Q. -- that you got involved?

A. -- into the political world, particularly given the time that I was born here in Austin. My parents were very much involved in civil and voting rights movement. My mother was a

schoolteacher. My dad worked in this building. It was still the Federal Post Office. I had the unique perspective of having held my mother and dad's hand while they marched and picketed to get rid of the poll tax and then 40 years had my mother sitting out there crying when I sworn in as Secretary of State. Ironically, my father was the first b ack employee in this building. He was the first black postal clerk in Austin, Texas. So I was sort of immersed in the political life. And one of the reasons I became a lawyer, because I believed at that time that most good things happening for African-Americans and Hispanics were because somebody sued somebody. And we were very hopeful that the men and women who sat on the bench would make sure that justice was done. Not withstanding what this State said, that the Constitution imbued

certain rights on all people. Irregardless of our color, those rights would be upheld. That's why I went to law school. That's why I got involved in politics.

I remained in politics, even as a lawyer. I told you I worked for United States Senator Lloyd Bentsen on his staff in Washington as a policy analyst. I was a researcher for the old Texas Legislative Study Group the entire time I was in law school.

In 1983, I became an attorney and lobbyist for the City of Dallas and spent six years going back and forth between Austin doing that. 1990, I got involved in Governor Ann Richards election campaign and later held a number of posts in her administration, including chairing the General Services Commission, and in April of 1994, I was appointed Secretary of State.

At end of that year, I went back to Dallas and ran for mayor of Dallas and was elected in May of 1995 and re-elected in 1999. In November of 2001, I had some sort of

blunt trauma head injury and woke up and thought that I could be elected to the United States Senate.
(Laughter.)
And -- and I think you've heard quite enough testimony, then, about how much better a candidate I was than Morris Overstreet, at least --
(Laughter.)

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Probably has some to do with race. I've always maintained it had something to do with looks, Your Honor, but obviously at least in Southeast Houston and Tarrant County I did a whole lot better than Morris Overstreet, but the end result was the same. So today instead of sitting in Washington, I'm here with you-all and thrilled to be here.
Q. Mr. Kirk, you -- you've campaigned in your latest Senate race -- just to stick with that a minute. You've campaigned throughout the State of Texas; is that not correct?
A. Yes, sir.
Q. And asked the TLC folks to put up the current map, 1151C with the focus on the Dallas and Tarrant County area. You're familiar with the congressional districts there, are you not?
A. Yes, sir. In fact, I lived -- when I returned to Dallas in 1983, I moved into Congressional District 24 and lived in that District for over 10 years.
Q. No. 24 --
A. And --
Q. I'm sorry. Go ahead.
A. No.
Q. District 24 is a District currently held by Congressman Martin Frost?
A. Yes, sir.
Q. And District 30 on the map is currently held by

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Congresswoman Eddie Bernice Johnson; is that correct?
A. Yes, sir.
Q. Have you had occasion to campaign with Congressman Frost from the District 24?
A. Over the years, I have campaigned for him, and I was delighted to be able to campaign with him in this most recent race. While I was running for United States Senate, he was campaigning re-election.
Q. And what efforts did you make as a candidate when you went into Congressman Frost's district with specific attention to the minority communities?
A. Well, Martin Frost has represented that District for a number of years, has gained a very strong base of support among African-American and Hispanic voters because of his strong voting records, his stance in favor of affirmative action, Voting Rights Act, increased funds for education, openness and opportunities, and Martin has an incredible following and amount of respect among the African-American community. And he's one of the few Anglo Congress persons that I could go in and have him frankly validate me before Black voters in Ft. Worth. And his support was critical, I think, to the strength of the African-American turnout in both the Primary and in the Runoff in my election.
Q. What group in the current 24th do you believe dominates the outcome of elections within that --

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A. Well, at least this past election. I mean, I think some of the voting intensity had, I'd like to believe, had little bit to do with my being on the ballot in a District, I think the Congressman's testified only got about a 24 percent

African-American population. And the primary in '02, the African-American turnout was 60 percent of the vote. In the Runoff, the African-American vote was 70 percent of the total vote. So I think that shows how strong that vote is in that particular District.

Q. Are you familiar at all with the efforts made to increase voter turnout in that District, specifically targeted to African-Americans?

A. Yes, sir.

Q. What is your familiarity with that?

A. Well, I mean, I've been a part of it and turning that vote out and educating voters and making sure people are aware of the opportunities of vote, voter education, voter registration, voter communication, all of those -- those elements. And I don't want to make this sound like a Martin Frost sing-song, but a lot of that is done because of Congressman Frost's efforts throughout the year. He is one of the few Congress people that maintains an open, active political operation year round, and it's manifest in the strength, and I think the respect and the support he gets from the African-American community across Dallas/Ft. Worth.

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Q. There was a question raised, I believe it might have even been from the bench yesterday about why a -- if there's any explanation for why Congressman Frost has never had a Black opponent or a contested primary, for that matter. Can you offer any insight on that?

A. I can't speak to why he's never had a contested pri -- I mean, I'm sure all politicians would love to be able to state that we don't get contested if we do our job good, people think we're doing a good job. I'm not going to tell you why nobody's ever run against him. And I say this, hope it doesn't offend anyone else, but at least in the African-American community,

Martin is affectionately known as a Baptist Rabbi, is what we call him. And he has very much endeared himself to our community and we trust him and we respect him. And I know there's been a lot of speculation of whether that district, because of the strength, could elect an African-American candidate, and I believe we could.

But I do not believe that you could elect an African-American candidate, including perhaps myself, against Martin because he has worked so hard to gain the respect and to keep the trust of his constituents. If you do a good job, if you communicate with your constituents, if you vote on the issues that they care about, generally they'll let you go back again.

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Page 37 [Roy Brooks]

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Q. Good afternoon, Mr. Brooks.
A. Good afternoon.
Q. Can you please tell us how you're currently employed?
A. I am Precinct administrator for Tarrant County Commissioners Precinct No. 1.
Q. Tarrant County is right next to Dallas County in the area that Mayor Kirk just talked about, correct, sir?
A. That's correct.

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Q. Now, talking a little bit about the 24th and its politics, do you believe that African-Americans control the Democratic Primary?
A. Yes.
Q. Now, we've heard specifically on the State's cross-examination of Professor Lichtman. You were in the court for that, weren't you, sir?
A. Yes, I was.

Q. We heard a debate about that where the State basically suggested that maybe they did not -- that community did not control the Primary. I don't want to get into the numbers, either the State's --

A. My eyes glaze over when you start getting into regression analysis.

Q. But what I do want you to do is share with the Court your understanding based on your experience working with these communities over the past 30 years exactly why you believe the African-American community does control the primary in the 24th.

A. Let me give, you know, an anecdote. In the -- the general election in 1994, Congressman Frost faced a very serious challenge from an Anglo Republican candidate. And I was with Martin on election night in 1994. And he was sweating bullets.

It was 9:00 o'clock, and he was behind. First time he'd ever been behind, so Martin was sweating.

I asked him where is southeast Ft. Worth. He said, those boxes have not come in yet. I said, relax, Martin. It's going to be all right. And, in fact, it was. He ended up winning that election by a substantial margin based upon the performance of the voters of southeast Ft. Worth. And that impact has continued to grow since 1994.

Q. And in the Primary itself, specifically, we have heard evidence that Congressman Frost is not facing many primary challenges. You've heard that testimony earlier today, sir?

A. Yes, sir.

Q. Okay. Let's talk a little bit about that. Would you say that Martin Frost has been the favored candidate of the African-American community?

A. Yes, sir.

Q. Okay. Why is it in your estimation, based on your experience and knowledge of that community that there have not

been primary challenges to Congressman Frost?
A. Because Congressman Frost serves our interests. His voting record as rated by the NAACP is up in the mid 90 percent. It's higher than some African-American Congress persons I could name. Martin works hard for the members of his District. He is compulsive about it. When you call his office, you get a response. Very often you get a response from him personally.

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He knows the issues of the District. He responds to his constituents.
And, you know, the African-American community is not stupid. We understand seniority. We understand the need for our Congressmen to be able to reach outside of the Congressional Black Caucus and form coalitions to get things done. We are proud of Martin Frost's ability to do that and his willingness to do it on our behalf.
Q. Now, if Congressman Frost retired, and I'm talking about now the current 24th and that became an open District, do you believe the African-American community would be able to elect a candidate of their choice to replace Congressman Frost?
A. If Congressman Frost were to retire and it were an open seat, I am certain that the African-American community would field qualified candidates and would elect one of them to the U.S. Congress.

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Page 48 [Ruben Hinojosa]

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Q. Are you familiar with the voting patterns in South Texas?
A. Yes, sir. I have been in 15 elections, and I understand how it works.
Q. Can you describe the difference between a Hispanic voting age population and the results on election day?

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A. Yes. I can tell you that the numbers in my area are about 88 percent Hispanic, and the numbers that come out to vote are far less. It is probably more common along the Texas border region from Brownsville to McAllen to Laredo to El Paso that in those areas in order to win an election, you need to have about 57, 58 percent or higher Hispanic voter age population because of the low turnout.

Q. And is this low voter turnout, which is historical in part, still continuing today?

A. I say that it has gotten better over the last ten years, but we are still looking at a very young population that is ten years younger than the national average. Ten years younger, making them about 26 average versus 36 nationally and that they're just now beginning to get interested in voting. And so it's going to take another ten years before we see the formidable numbers come up out to vote.

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Page 59 [Martin Frost]

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Q. Congressman Frost, what District do you represent?

A. The 24th.

Q. And how long have you represented the 24th District?

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A. I'm in my 25th year in congress.

Q. So you were elected in 1978; is that correct?

A. That's correct.

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Q. Now, you mentioned that the African-Americans were

critical to your election in 1994. Can you tell us about the circumstances of that rather difficult year for Democrats?

A. Well, that was the year that Republicans took over the House of Representatives and Democrats all over the country were defeated. And I ran very, very hard that year. I determined early on that -- I did some polling early on and determined that this was going to be a pretty tough year, and so I worked very hard. And as it turned out, the only areas that I carried were the African-American Precincts in Ft. Worth and the Hispanic Precincts in north Oak Cliff. I got 50 percent, just over 50 percent in Navarro County, so I split the vote in Navarro County.

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I lost everything else. I lost Ellis County. I lost Arlington. I lost Grand Prairie. I lost Duncanville. I lost Cedar Hill. I lost De Soto. I lost every part of my District except the African-American Precincts in southeast Ft. Worth and the Hispanic Precincts in northwest Oak Cliff. And I wound up getting about 52.7 percent of the vote, if I recall correctly. So it was a pretty close race.

Q. Now, in your current District, are minority voters an important part of your base?

A. Absolutely. My current District, the African-American community is 22 percent, the Hispanic community is 38 percent, and there's 5 percent Asian. So it's all total, about 65 percent minority. And they are absolutely critical in my current District. I couldn't be elected, I don't believe. I don't think a Democrat or anyone could be elected in that District without the support of the African-American community and the Hispanic community.

Q. And what's your understanding about the extent to which the African-American community controls the Democratic Primary in your District?

A. Well, it's -- from looking at the statistics, it's my understanding that the African-American share of the primary vote in my current is about 60 to 65 percent, so that the vast vote -- primary vote comes out of the African-American community. And that's really for two reasons. One, that Anglos

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by and large vote in the Republican Primary now in the Dallas/Ft. Worth area. Not a lot of Anglos vote in the Democratic Primary. And also, the -- while Hispanics are 38 percent, a lot of them are not citizens and aren't eligible to vote.

We have an interesting phenomenon in the Dallas/Ft. Worth area in that when recent immigrants from Mexico come into the Texas, they often skip over the border and go directly to Dallas/Ft. Worth or to Houston because that's where jobs are. And they don't -- and that's why we have such a high rate of noncitizens in the Dallas/Ft. Worth area. Because people have come up to work on construction jobs. People have come up to work in restaurants. And so the Hispanic turnout is -- while it's helpful to me obviously in the General Election, it's not a major part of the primary vote. Even though the numbers are there, but it's a fairly smart part of the primary vote.

Q. Do you have an assessment, Congressman, of whether your's is a District in its current form, that if you weren't running, an African-American candidate could win in?

A. Absolutely. I believe that if I were to retire or take an appointment in a new administration, should there be one, whatever, if I were to leave office that an African-American -- the African-American vote would determine the new nominee, and I believe that could well be an African-American. But clearly the

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choice of the African-American community would be the nominee.
Q. Do you --
A. And there are some very able African-American office holders in both the Dallas County part of District and the Tarrant County part of my district who would be very credible candidates, and I believe one of them probably would win the primary.
Q. Do you think such a candidate could beat you in the Primary if you were running again?
A. I think probably not. I think that I'm -- I've been in 25 years. I have a long record of service to the African-American community. I've had very strong support -- and to the Hispanic community. I had a Hispanic General Election opponent in the last election, and I got the overwhelming part of the Hispanic vote. I mean, he almost didn't scratch in the Hispanic community. And I believe that with my 25 years of seniority and my record of service to the community that I believe I could win, although it might be an interesting race.
Q. Do you have a view about why it is nobody has tried that?
A. I think because over a period of years, I have spent an inordinate amount of my time and my energy in the African-American community in my District. I have been involved in an enormous number of things to help the African-American community. I'll list some of those if you want me to.

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Q. Is it true that the District configuration for District 24 when it was drawn in 1991 was drawn for the purpose of protecting the incumbent?
A. I'll tell you how it happened. I'll be happy to answer that question. Basically, my colleague, my now colleague, Eddie

Bernice Johnson, felt very strongly about the creation of an African-American dominated in Oak Cliff, and she was chairman of the committee. And she drew that District. And then she drew the 24th District around that. And it was drawn in a way that I would have a chance of winning. It was not -- it wasn't as good

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a Democratic District as I had represented during the Eighties, but it was certainly drawn in a way that I would have a chance of winning, that's correct.

Q. Okay. So, the answer to my question is yes?

A. Yes.

Q. All right. Now, is it also true that the plan that the Court drew in 2001 is similar to the plan in 1991 to the extent that it protected incumbents like you in District 24?

A. I think that's correct. Two of the Judges are here that took part in that. I don't know what to put -- I don't want to make my conclusions, but I think that's correct. I read their opinion, and I think that if I remember correctly what they said was that there were senior members of the Democratic party and senior members of the Republican party and that it was in the State's interest that those senior members of both parties be protected. They didn't mention me by name, but I think I was one of the people they were talking about.

Q. What was your role in 1991 when the plan was drawn by the Legislature?

A. Well, as I mentioned earlier, I was part of a committee. Congressman Coleman from El Paso was the chair of the committee. I was a member of the committee, a Democratic member in delegations who worked together and took a plan down to Austin in April and presented it to the Speaker and ultimately it was given to the Lieutenant Governor also.

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Q. Is it your perspective that the plan that was created by the Legislature in 1991 was, to use your phrase, a bipartisan political gerrymander?
A. It preserved -- yeah. The answer is yes. It preserved the Districts of all sitting Republicans and all sitting Democrats. It -- unlike the plan that was -- the plan that was

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passed this time, it didn't try and do -- it did not try and do in any sitting member of either party.

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December 15, 2003, 1:00 p.m. Session

Page 17 [John Alford]

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Q. Well, let me ask you this. I will read you a quote about the '91 plan and see if you agree with it. I'm quoting from the Almanac of American Politics in 1994, and it says, and I quote, "Texas' 1991 redistricting plan wins the Phil Burton award for the decade for it's creatively drawn lines in unlikely places; for the convoluted boundaries of its Districts, which

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snake-like, seemed to be threatening to swallow each other; for the partisan affrontry (sic) which enabled the Democrats to protect all but one of their incumbents and to capture the State's three new seats as well; for the ingenuity with which White urban Democrats, long dependent on Black votes were given Districts where Democratic rural counties were substituted for urban Black neighborhoods." Do you agree with that?

A. I think it's a pretty fair characterization of the '91 Legislative plan.

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Q. Then let's quickly look at what the

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perimeter-to-area score is of some of the Districts in the plan that the Legislature just passed and how they compare here and whether that's of any concern to you. Do you have a chart in your expert report that would tell us what the perimeter-to-area score for District 15 is?

A. In 1374C?

Q. That's exactly correct.

A. That's 11.6.

Q. Okay. And what about District 25?

A. 9.6.

Q. And how about lastly, District 28?

A. 5.7.

Q. Okay. So wouldn't you agree with me that in the Districts that you have expressed an opinion, that race is predominating, mainly Districts 15, 25 and 28 in the new plan, that the perimeter-to-area scores are much more in the range of reasonableness than the kind of scores you would expect from Districts in the '91 plan that were shot down as unconstitutional by the Vera panel in 1996?

A. If we're focusing on the sense of raggedness of the perimeter, I don't think any of those Districts are troublesome in the raggedness of their perimeter alone.

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Page 53 [Richard Engstrom]

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Q. Let's now focus on District 15. And of the eight elections that you examined, were there -- were there any races in District 15 in the plan that the Legislature produced in which the Hispanic candidate lost?

A. No.

Q. All right. Now, would you agree with me that in District 15 that the Legislature drew, that that is one in which Hispanics have the opportunity to elect their preferred candidate?

A. Yes.

Q. In fact, your tables show eight out of eight times; is that right?

A. I just answered that question, I believe.

Q. Now, you would also agree in the Legislative Plan that District 27 is a District where Hispanics have the opportunity to elect their preferred candidate?

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A. Correct.

Q. The same is true in the Legislative Plan for District 28?

A. Correct.

Q. And the same is true for Districts 16, 20 and 25 in the Legislative Plan; is that right?

A. Also correct.

Q. Now, would you agree with me that if you make a decision to draw seven Hispanic Districts in the western and southern portion of the State of Texas, that it is possible that in doing so, some of the Hispanic

percentages in the adjoining Districts will decline?
A. In the adjoining -- I mean Districts that are not Hispanic?
Q. No. In the adjoining Hispanic Districts.
A. Oh, yes. Some of them will decline in their presence of Hispanics, sure, because you're creating an additional District.
Q. Focusing again on District 15, but asking a question about the Primary, not the General Election. With 56.7 percent registration for Hispanics, wouldn't you agree that District 15 in the Legislative Plan provides Hispanics with an opportunity to nominate out of the Democratic Primary?
A. Yes. I believe it would provide an opportunity

to nominate, yes.
Q. Wouldn't -- wouldn't you also agree that Plan 1374C is not retrogressive for Hispanic opportunities statewide as compared to 1151C?
A. Not retrogressive in terms of the opportunity to elect representatives of choice.
Q. Now let's shift focus and make a comparison between the new District 25 that the Legislature created and old District 23 which the Court drew. Would you --
A. 23?
Q. 23, yes, sir. So we're talking about new 25, old 23.
A. Yes.
Q. Would you agree with me that for all eight re-aggregated elections that you've studied, the margins of victory stated as a percentage are more favorable in each of the eight elections in new District 25 than in old District 23?

A. Yes.
Q. So would you agree with me that in new District 25 in the State's plan, that that is one in which a better opportunity exists for Hispanics to elect a candidate of their choice than old District 23 in the plan the Court drew?
A. Yes; in the sense that it was eight for eight.

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Q. Okay.
JUDGE HIGGINBOTHAM: In the sense of what? I'm sorry.
THE WITNESS: That it was eight for eight and the margins were higher, yes.
Q. (By Mr. Taylor) To follow up on that answer, when you're looking at the results of the eight elections in new 25 and comparing them with old 23, eight out of eight times the Hispanic-preferred candidate wins in new 25 and only five out of eight times does the Hispanic-preferred candidate win in old 23. Is that true?
A. That's correct.
Q. All right. Last question. On the demonstration plan -- I don't have it. Is it 1385, I believe, C. If you're -- if you're looking at how District 25 in the Demonstration Plan sizes up with District 25 in the plan the Legislature drew -- are you with me?
A. Yes.
Q. So, studying how does District 25 do in the Legislature's Plan and how does it compare and contrast with the performance of 25 in the plan that the GI Forum has put up as a demonstration plan? Wouldn't you agree with me that in all eight elections that you analyzed,

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the margins of victory for the Hispanic-preferred candidate in the demonstration District 25 is lower than the margin of victory in District 25 that the Legislature enacted?
A. Yes.

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Q. The fact that the Hispanic percentage of the General Election in new District 15 falls below 40 percent does not, in your opinion, render it an ineffective Hispanic opportunity District, does it?
A. No, it does not; because they win all eight

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elections and that includes, of course, the last four.
Q. So the most we can glean from that line of inquiry is that turnout in one election was under 40 percent, and certainly if they get their folks to the polls can increase in the future; is that true?
A. You mean the turnout could increase in the future?
Q. Right.
A. That's certainly possible.
Q. Okay.

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December 16, 2003, 1:00 p.m. Session

Page 40 [Jerry Polinard]

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MR. GUAJARDO: Your Honors, I offer Dr. Polinard as an expert on political science in South Texas.

Q. (By Mr. Guajardo) Dr. Polinard, we've asked you to focus on the electability of Hispanics, the ability of Hispanic candidates of choice in Districts 15, 27 and 25 in both the current plan and the proposed redistricting plan; is that correct?

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A. That's correct, sir.

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Q. Well, given all that you've testified to with regard to District 27, what general range or level of Spanish surname voter registration in your opinion is required so that Hispanics can effectively nominate and elect their candidates of choice?

A. I -- I have no magic number. That's going to vary -- vary by District. I will state the obvious, that if the Spanish surname voter registration percentage goes up, the opportunity goes up.

I think you become comfortable with

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opportunity Districts once you break into those 60 percent plus ranges.

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December 17, 2003, 1:00 p.m. Session

Page 125 [Royce West]

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Q. (By Mr. Cruz) Do you believe that if an African-American candidate ran against Martin Frost that Martin Frost might be likely to loose?

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A. It kind of depends upon who the person is. I firmly believe that if I decided to run against Martin Frost or a Dionne Bagsby decided to run, if a Domingo Garcia decided to run, that we would be viable candidates and could give Martin Frost a pretty good run for his money and could conceivably win.

Q. Senator, the terms you used were viable and conceivably, and what I'd like to ask is if you believe if any of the candidates you named or another African-American candidate run -- ran against Martin Frost in a Democratic Primary that that candidate would be more likely than not to win, greater than 50 percent chance of defeating Representative Frost?

A. Mr. Cruz, if I decided to run against Martin Frost, I could beat him.

Q. And of the other candidates you listed, do you believe it is more likely than not that they would defeat Martin Frost?

A. I think -- I don't know the strength of Dionne Bagsby. She's been a county commissioner in Tarrant County for years, and Martin has a majority of her District within his Congressional District, I believe, and I believe that if she decided to run, that she would also be a viable candidate. Viable candidate basically meaning having the financial resources in order to mount

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an election against an incumbent. I think that we could do that.

But we've decided not to, and the reason we've decided not to is because Martin is there, and he recognizes that if he does not look out for the interests

of our respective communities, that he could get someone to run against him. So he has taken care of our political interests in Washington. And as such, we're politically empowered, and we're effective as a result of his advocacy and representation of us, thus we've decided not to run. I mean, you know, he's the candidate of our choice in that District.

Q. Senator, you made several references to a viable candidate.

A. Yes.

Q. Are you aware of any viable African-American or Hispanic candidate that has run against Martin Frost in a Democratic Primary?

A. No, I'm not.

Q. Do you believe that if African-Americans and Hispanics worked together in Congressional District 24 that they could elect the candidate of their choice in the Democratic Primaries?

A. I believe that if African-Americans, Hispanics and Anglos work together that they could elect a

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candidate of their choice, and we're doing that right now. And that's Martin Frost.

Q. Setting aside for a second Anglos and just focusing on minority voters in CD 24, do you believe if African-American voters and Hispanic voters in CD 24 worked together that they can elect the candidate of their choice in CD 24?

A. And when you say CD 24, you're talking about the current CD -- the Court --

Q. Yes, sir.

A. -- CD 24? Yes.

Q. All of these questions are focused under the –

under the current Court Plan, CD 24.
A. Yes.
Q. As a matter of practice in CD 24, do African-Americans and Hispanic voters vote together when faced with contested Democratic Primaries?
A. It kind of depends on what the race is. I mean, I think that it really depends upon what the race is.
Q. Is there any general tendency of which you're aware in CD 24 of African-American voters, whether they tend to vote together or whether they tend to oppose each other when they are voting in a contested Democratic Primary?

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A. For the Congressional seat or any race within the --
Q. Any race in that area.
A. Well, if you're talking about -- let me give you an example. I ran for District Attorney in Dallas County back in 1986. Part of Dallas County, at that point, was in the 24th Congressional District. And African-Americans and Hispanics voted for me for District Attorney. When I ran for the State Senator, I ran against two very good friends of mine, one being Gerald Larry who was a sitting State Representative and also Jesse Oliver. African-Americans and Hispanics voted for me.
So there are different instances where coalitions have been established and we've worked together in order to elect the person of our choice.
Q. Are you referring, in those instances, to Primary elections or General Elections?
A. Primary elections.

Q. Primary elections.
In a race where an African-American candidate is running against an Hispanic candidate, in your experience, do voters in CD 24, do Africans and Hispanics tend to vote together or do they tend to vote opposed to each other?

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A. Opposed to one another.
Q. In a race between an African-American and an Anglo candidate in a Democratic Primary, and we're focusing only on Democratic Primaries, not the General, do African-American voters and Hispanic voters in CD 24 tend to vote together or opposed to each other?
A. It kind of depends on who the candidate is and what the race is. I mean, it's kind of all over the board. It really depends on who the candidate is. There have been coalitions between African-Americans and Hispanics that where you have an African-American candidate and the White candidate are running against one another. I mean, that's my general sense of what goes on there.
Q. So you're not aware of a tendency that predominates one way or the other?
A. No. I have not researched that, and nor am I aware of a tendency that predominates one way or the other.
Q. Okay. We set aside -- we were going to set aside Anglo voters. I'd like to talk very briefly about Anglo voters and ask you --
A. Sure.
Q. -- in your experience, do Anglo voters in CD 24 tend to vote in a racially polarized manner that

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usually defeats a minority candidate?
A. Sometimes that has happened, yes. I'm trying to be more specific about when. The great -- it's more -- when you begin to look at CD 24, needless to say, there's a multitude of races, and I just can't filter all those races through my mind.
We have a pretty good coalition right now of African-Americans, Hispanics and Anglos working together. So I can't think of any specific instances, Mr. Cruz, where here recently I've seen that polarized voting as it relates to the Congressional District. Now, I'm pretty sure there are instances within the District itself where you have that polarized voting, but I can't tell you what those races have been.
Q. To make sure I understand your testimony, Senator, what you're saying, if I understand you correctly, is that Anglo voters do not vote in a racially manner such that they would usually defeat a minority candidate; is that fair?
A. I don't think that -- no. I did not say that. I don't think there is sufficient numbers to be able to do that at this point in time as relates to the Congressional District. But I cannot answer the question as it relates to specific races because I hadn't analyzed that. That would be best left to an expert to give you

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that analysis.
Q. Well, based on your knowledge of the area and the District, having run in the District and being familiar with other candidates in the District and other elections in the District, what I'm asking is for your

characterization of what usually happens.
A. Okay. And I don't know whether -- let me give you an example, and I don't know whether this particular race was in the 24th or whether it was in the 30th.
Lancaster Texas, where we had an African-American that was running for mayor of the city. That was an instance where you had a polarized vote and we thought the African-American had won, and it turned out a couple of days later he had lost, and it was polarized voting there.
You could probably look at some of the suburban communities within the 24th Congressional District and see that there's polarized voting between African-Americans and also Anglos. But realistically, you should do an analysis of it and have an expert do that. But my sense is is that certain portions of the 24th Congress District, you will have polarized voting.
Q. Based on your experience, does that usually happen or not?
A. It usually happens.

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Q. So usually Anglo voters will vote in a racially polarized manner in CD 24 against minority candidates?
A. No. Let me -- let me, again, make sure you understand. What I'm saying is, is that that's my sense. But realistically, what you have to do is to look at the numbers to make that determination. And that's in certain portions of CD 24 and not the entire Congressional District.
Q. So is it a fair characterization of your testimony that based on your experience with the District, both running and being familiar with candidates and the voters in the District, but with the caveat that

it's not based upon an analysis of the data and the statistics, that usually Anglo voters in the District will vote in a racially polarized manner against a minority candidate?

A. In certain --

MR. GRIFFIN: Objection, asked and answered.

MR. CRUZ: It's been answered both ways. I just want to know which way the answer is.

JUDGE HIGGINBOTHAM: Answer it one more time.

A. Okay. In certain portions of the District, that is correct.

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Q. (By Mr. Cruz) And for the District as a whole?

A. I cannot say that for the District as a whole because I don't have a general sense of that.

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Page 152 [Eddie Bernice Johnson]

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Q. Would you state your name for the Court?

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A. I'm Eddie Bernice Johnson.

Q. Congresswoman Johnson, I am going to give you an exhibit book so that you can refer to it as we go through. You are currently a United States Congresswoman in the 30th Congressional District?

A. Yes.

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Q. There's been some testimony that when you served

in the Senate you served on a committee dealing with redistricting.

A. Yes.

Q. What -- what committee did you serve on?

A. It was a subcommittee on Congressional redistricting 1991.

Q. Okay. And what was -- tell us how that committee was set up, what your role was.

A. I was appointed by the Lieutenant Governor to chair that subcommittee for Congressional redistricting and there was another member who chaired the Texas Senate redistricting.

Q. When was the 30th Congressional District created?

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A. In 1991.

Q. And what was the impetus or political will, or what was going on in the State or in the Dallas area that called for the creation of the 30th Congressional District?

A. Well, there had been an outcry for the District for as long as there had been one from Houston. We had single member Districts for the Texas House, and it was virtually -- we were eventually instructed to get that District for -- at that particular decennial.

Q. Who instructed you?

A. There had been -- in the court decision, it had been suggested as well as from the Justice Department.

Q. You made mention that Dallas had been attempting to obtain a African-American District since 1971, or in the '70s, when the Houston District was created?

A. That's right.

Q. What type of problems was the Dallas African-American population encountering in terms of being

20 able to create that District?
21 A. It was split up, of course, to elect White
22 Democrats.
23 Q. And how was it split and who were the serving
24 White Democrats at that point in time that you could not
25 get to create the District?

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1 A. Jim Mattox, John Bryant and Martin Frost. And
2 the Trinity River was used as a boundary, which was right
3 in the middle of the -- split the concentration of the
4 African-American community in half.
5 Q. Jim Mattox, he served in what District? Is that
6 District still in existence?
7 A. He served in the 5th.
8 Q. Bryant -- John Bryant served in what District?
9 A. He was also in the 5th. Mr. Mattox left because
10 he thought it was time for the Hispanic -- for the
11 African-American District, so he came out at that time.
12 But after it didn't change, John Bryant ran.
13 Q. And then Martin Frost served in what District?
14 A. He served in the 24th.

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13 Q. I just have a couple of questions for you.
14 Charles is going to put up the Hispanic voting-age
15 population concentrations for the current plan and I
16 wanted just to ask whether it's your opinion that the
17 Hispanic population is divided across Congressional
18 Districts now in the current plan?
19 A. To -- yes, to a certain degree.
20 Q. And what would you say is the motivation for
21 that division?

A. I'll have to answer that the same way I answered to my attorney. It's to accommodate others.
Q. And, in particular, White Democrats?
A. Martin Frost.

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Q. I'm looking at a article that came out on November 9th of this year and it purports to quote you, and I just wanted to see if it's an accurate quote.
A. Okay.
Q. "We respect each other. But when it comes to redistricting, he's always worried about one person and

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that's himself, and he doesn't care what happens to anybody else." Is that an accurate quote?
A. Yes, it is.
Q. Who was that about?
A. Martin Frost.
Q. What were you trying to convey?
A. Just what it said.
Q. It also goes on to say that you felt double-crossed. Did you --
A. I was double-crossed, in 1996.
Q. Can you please explain?
A. Sure. There was -- at the time that the Districts were contested, I was the one with standing in the Dallas area, and it was Gene Green and Sheila Jackson Lee in the Houston area. And we were instructed by the Court to offer maps. We worked for a long time trying to get agreement with the maps between the Democrats and Republicans. So, finally, we had to submit separate maps. When we met with the State Attorney

General's office prior to going to court, Martin Frost presented the map that ultimately was adopted, and I told him, no, that wouldn't do. For one thing, it had the home and the office of Congressman Dick Army in it and the home and the office of Congressman John Bryant -- the home, not his office, I think. And, so as far as I knew, that map

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was dead.
But the attorney that was representing me was pregnant -- about eight and a half months pregnant by the time it was court time. So, Mr. Hebert, who is sitting right there, and Mr. Frost came to me to get him to represent me, to keep her from traveling, and I agreed to it, but I didn't know I would be double-crossed. The next day after the map was turned in, it was not my map. It was the Martin Frost map, with those precincts removed that I just talked about and that's all. And that's the one I ran in from '96 up until the new decennial here in the last election.

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December 18, 2003, 8:30 a.m. Session

Page 73 [Bob Davis]

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Q. Were you involved in drawing redistricting plans for the Legislative Redistricting Board in 2001 for the Texas Senate and the Texas House?
A. Well, I was involved in drawing plans for a member of the Legislative Redistricting Board, some of which were subsequently presented to the board and adopted by it.
Q. Tell us your role in the year 2003 insofar as it relates to Congressional redistricting in Texas.

25 A. My recollection, it was sometime in late June

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1 of 2003 the Lieutenant Governor called me. He indicated
2 that the Governor was going to call a special session to
3 deal with the issue of Congressional redistricting and
4 would I be willing to come and assist the Senate in the
5 process. And I told him that I would.
6 Q. And did you draw plans for the Texas
7 Legislature to consider for Congressional redistricting
8 in the year 2003?
9 A. Well, you never draw a plan all by yourself.
10 But yes, I drew plans for consideration by the
11 Legislature or certain members of the Legislature in the
12 special sessions in 2003.

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15 Q. All right. Let's move now to Webb County.
16 We have on the screen, Mr. Davis, the Webb
17 County portion of the Legislative Plan. And in a
18 greenish color we see Webb County in District 28, and in
19 an aqua blue we see District 23.
20 And first off, would you tell me where the
21 highway, IH-35, is on that map?
22 A. Well, you can put it up there, I think with an
23 annotation. But this right here, I believe, is
24 Interstate Highway 35.
25 Q. Okay. I made the point during one of the

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cross-examinations that the split, the actual line of demarkation between Districts 28 and 23 was the highway. And then another witness made the point, though, that it's not entirely the highway. There's a portion there, that blue portion, that goes into Webb that doesn't follow the highway line. Do you see that?

A. Yes, sir, I see that.

Q. Can you explain why that is the way that it is?

A. Well, I don't know that I was actually involved in drawing this particular portion of the map. But I think that this area in here ended up being where you balance the population in District 28. The northern end of District 28 was fairly well configured in the Bexar County and in Comal and Guadalupe and Hays County, I believe, and so I think the balancing for population purposes in District 28 actually occurred in Webb County.

Q. Let's explain that answer a little bit more just in general.

Explain to us, when you have to have equal population size for all of the 32 Districts, how a demographer like yourself goes about zeroing out the population. How do you do that?

A. Well, first, of course, you identify what population you're zeroing to. I think in this instance it was 651,219 or 519, anyway, for 20 of the Districts,

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and 12 of the Districts had one additional person or, you know, 20 instead of the 19.

You got to start at the corners because you can't go get additional people anywhere else. So, I think the first District that got zeroed out, indeed I

think the District that probably never changed the whole process was El Paso County, and it was left the way it was, even though I saw some configuration change to put some cities back together. I think it was left the way it was.

And then you have to start in the Panhandle and then you have to start in South Texas, and then you have to start in East Texas, and you have to start in Southeast Texas, and then you bring all those and then you ultimately balance all the population towards the center of the State. And then when you get through, you balance all the Districts that touch in there.

So, in this instance, District 27, which is on the Gulf Coast from Corpus Christi to Brownsville, would have been balanced first. Because if you can confine it to those counties, then you had to balance it to the west. You couldn't -- you can't go east or south in those particular -- in that configuration because there's nothing but the Gulf of Mexico and the Nation of Mexico to the south.

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So you balanced 27 against 15, and then you balanced 15 against 25, and then you balanced 28 against 23. And then you balance 25 in the end in Travis County, which was its northern terminal.

And so the process is, is that once you have the territory configured, you go into some county, because you must do that, and then take whatever population is necessary in order to bring it up to or down to the ideal number.

Q. Is it your testimony that in order to equalize population amongst 32 ideal District sizes that it was necessary to cut county lines from time to time?

A. Oh, yes, sir. Absolutely. I do not know of any configuration that existed in any of this map structure where you put whole counties together and got the precise number of people.

Q. Did you ever have to cut voter tabulation Districts, otherwise called VTDs, from time to time in order to equalize population?

A. Yes, sir. In most every cut on the final analysis for equalizing the population, we were doing the final balancing, you had to cut VTDs. I think once in all of the drawing that I did, it ended up that there was a VTD, there were exactly the right amount of people on the border of the two districts involved.

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Q. When you're trying to zero out for population, whether it be Webb County or any other county in the State of Texas, what kind of census geography are you looking at, what level?

A. Well, my son -- who worked with me -- and I would argue about this, but I would generally start, as we almost did at the VTD level, and you would look for combinations of VTDs that approximated the population differential that you had to the ideal. Either take those out or put them in. And once you got to that level and got as close as you could, then you might go to the bloc group level, and I would go to that. He never would. But anyway, I would go to the bloc group level. If I found something then, I would move it. If I didn't, I would go to the bloc level, which was the lowest level of census geography that we have, and that's where almost exclusively the final balancing, sometimes you're looking for 1, 2, 3, 5, 10, 12, whatever number of people it might be, and that's where your final balancing would occur.

Q. All right. Let's shift gears and go to Hidalgo County.
Mr. Davis, we now have the Hidalgo County portion of Plan 1374C on the screen, and we're looking at Districts 15 and 25, are we not?
A. Yes. And some of 27.

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Q. Right.
A. But in Hidalgo County, you're looking at 15 and 25.
Q. All right. Now, I want to understand whether or not you received any instructions to keep the City of Mission whole?
A. Yes. Senator Hinojosa, who was on the conference committee, was interested in keeping the City of Mission whole and intact in whatever plan was passed. And we had a 722 plan that did that and an A3 plan that did not, and I think this A3 plan ultimately does. But he was interested in altering whatever plan was passed in order to keep the City of Mission whole.
Q. What about Edinburg and McAllen?
A. I think likewise, Edinburg, and I think it was kept whole. I do not know about McAllen, and I do not know about Pharr. They -- once again, the population balance for District 15 was effected in Hidalgo County. And there was population right at the last that was taken out. Aransas County that had been placed into District 15 was replaced and put back into District 14 historically where it had been. And then additional population out of Hidalgo County was taken and put into District 15.
At that time, and this was right at the time

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end of the process, it may well be that some city limit lines were cut down there. But the cuts in Hidalgo County were designed, at that point, just to balance the population.

Q. All right. Let's --

A. I think the number was something like 22,000 people, additional people out of Hidalgo County that went into District 15.

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Q. Are there instances where you went to the bloc level?

A. Yes, sir, I believe that there are. My recollection is that in Tarrant County, in putting Representative Lewis' Legislative District, District 95 together, which is predominantly African-American, we went to a bloc level after we put it all together to make sure that we hadn't left out any adjacent territory. Because you can flash up a VTD, and it might show that it's all Anglo. But if you went to the bloc level, you might discover that several blocs out of that VTD are African-American or some other ethnic that are attached to the VTD that's adjacent to that.

Q. Was the purpose there to keep the House District whole?

A. Keep the House District whole and make sure that in the process of doing that we didn't split a minority community.

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Q. All right.

A. I don't think that was -- turned out to be an issue, but that is one where we did look at it.

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Q. Okay. There's been suggestions made in Court

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that why not just leave 23 the way it is and let's move Henry up into the Hill Country. Why didn't you do that?

A. Well, I mean, that would have given away a seat that a Republican currently holds rather than enhancing the seat. Which was one of the principal objectives in this redistricting process, was to enhance District 23 and Congressman Bonilla's stature. And, of course, you know, I have some personal feelings with respect to that, is that I believe that Congressman Bonilla's participation in the election in these principally Hispanic counties in South Texas has a beneficial impact long term. I think if you look at the election returns they certainly would indicate that he runs better than other Republicans do in that area.

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December 18, 2003, 1:00 p.m. Session

Page 6 [Bob Davis]

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Q. You told the Court this morning that one of the objectives you were instructed to accomplish was to increase the number of Republicans elected to Congress. Do you recall that?

A. Yes, sir.

Q. Another one of your objectives was to make District 23 more Republican so it will be safer for

Congressman Bonilla, correct?
A. That's correct.

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Q. Just tell us. I'm curious. Using this computer system, if you want to go after Democrats and do something with them, either include them or exclude them, how do you -- how do you identify that a particular voter is a Democrat?

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A. Well, one of the ways that I did it when I was doing this was to look at other Districts that overlay that census geography and see how it voted. For example, in District 25, when you brought it up and brought 15 up and you needed additional population and you wanted to put in Democrats into District 25, I knew that Travis County elected three Republicans to the Texas House of Representatives and three Democrats to the Texas House of Representatives and that the Democrats lay to the main on the east side of the county and the Republicans lay to the main on the west side of the county. So, when I needed additional people and I wanted Democrats to put in a District that was, you know, there, I simply went to Travis County and started taking people on the east side.

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Q. Well, Mr. Davis, insofar as the Districts you drew, not the ones you got from someone else, how could you make sure that those Districts complied with the law unless

you paid attention to the race of the people in those Districts?

A. Well, Mr. Susman, the one District that I can think of that I drew that would have been -- maybe two, that would have fallen in that category would have been District 25, when the population from The Valley was brought north, and looking at -- and let me say that the -- again, the genesis for that was certainly not mine, that plan had been proposed before. I think LULAC had proposed

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that to the three-judge panel that heard the case in 2001. The difference was when LULAC got to the northern terminus, they turned east and went towards Houston to get additional population. We turned west and went towards Travis County to get additional population. You put that population in and then you check the numbers at the end to see what it looks like.

Now, we took most all of the legislative District that is -- that commences at the southeast corner of Travis County. In fact, I think we took all of it except for a section that's east of 35, just north of the Colorado River, and I believe all of that legislative District is in the current District 25. And then we went north along the east side and across the north side and filled up till you got the right population. And when you get through at the end, you check your numbers and see what you have.

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Page 65 [Ron Wilson]

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Q. Good afternoon. Please state your name.

A. Ron Wilson.

Q. Mr. Wilson, where do you live?

A. I live in Houston, Texas.
Q. What do you do for a living?
A. I am an attorney by profession.
Q. What type of law do you practice?
A. A little civil-criminal, but primarily entertainment.
Q. Where did you go to law school?
A. The University of Texas.
Q. Where did you go to undergrad?
A. The University of Texas.
Q. Where did you grow up?
A. Houston.
Q. Are you in the Legislature?
A. I am.

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Q. Let me ask you straight out. There have been some suggestions, some intimations that your support for Plan 1374 was because you wanted a District that you could run in for Congress. Is that true or is it false?
A. It's absolutely false. Anybody who's watched my record over the past 20 years regarding redistricting can tell you that I have always been in favor of, where the numbers justified it, the creation of seats that would elect African-Americans and Hispanics in the positions of electoral responsibility. I think that I would be discounting and turning my back on 80 years of civil rights history to do otherwise.
Q. Speaking about that, what is the importance in

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your view of Martin Luther King and the civil rights movement, and how does that apply, if at all, to what

we're talking about right now?
A. Dr. King, his struggle definitely impacts on, at least what I do, as did the works of Dr. Carmichael and Ron Corran, and all the others that helped out in the movement. I mean, they fought for a place at the table, you know, not a ticket in a gallery.
And to me, when you talk about influence District or impact Districts, I call them begging and pleading Districts or step 'n fetch it Districts. Those are -- that term, I think, was originated by the segregationists when they tried to stop us from going to single member Districts. They said, oh, no, you have great influence as -- as your votes are in a county-wide race. Because you make up 15 to 20 percent of the county, you can influence all these folks. I mean, that was their argument against going to single member Districts, and now the same thing has cropped up now in this debate.
Q. I have heard both testimony and argument from one side of the room in this case suggesting that District 24 up in Dallas is a District that would elect a Black for Congress if pitted against an Anglo. What's your thought about that?
A. I think it would elect a Black if it was Martin

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Frost's long lost, you know, Black child, but -- standing up there with Strom Thurmond's daughter. There's no way. There's absolutely no way it can happen.

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Q. Last question. As I just sort of like you to break the code. A lot of people are saying, you know, Plan 1374C -- and for the record, you voted in support of

that?
A. I did.
Q. It's a Republican dominated map. It's what's -- it's what the Anglos want. It's what the Republicans want. It's unfair to minorities. Nobody supports it, and then all of a sudden they can't quite explain why Ron Wilson supports it. You're an African-American Democrat, and I just want to ask you flat out, why, sir, did you support this plan?
A. Well, the truth of the matter is you got Anglos fighting back and forth over this thing. Those are the ones who are fighting. I mean, my folks are kind of in the middle. And my deal is the train's on the track. I mean, in the Legislature right now we have a majority of

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Republican Legislatures. Majority House, majority Senate.

I have been around long enough to know that in a democracy, majority rules. Duh. So, if you got the votes, you get to rock and roll. And that's exactly what's happening.

The question for me is, do I sit on the sideline as the train goes by, you know, or stay on the track and get run over, or do I try to get some of my folks on the train. It's my opinion that in the spirit of the civil rights movement I should try and advance the interests of those who I represent. And if I can get another seat or support another seat for African-Americans and Hispanics out of this process, so be it. That's why I supported the plan.

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Q. Okay. Now, you said a minute ago, Mr. Wilson, if I understood you correctly, that these minority influence

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Districts, what I'm calling minority influence Districts, Sandlin, Turner, et cetera, in East Texas, you regard as begging and pleading or step 'n fetch it Districts; is that right, sir?

A. Those were my exact words.

Q. Okay. And you say that not withstanding the voting record of the Democrat incumbents in those Districts since they've been in Congress?

A. I say that as an absolute statement, yes.

Q. And you mean by that not that Mr. Turner and Mr. Sandlin and those other Democrats, those other Anglo Democrats are going and soliciting or begging votes from the African-American community, what you mean is that the African-American community is going and begging things from them?

A. It's a -- begging and pleading and step 'n fetch are terms, I guess, that came out of the Thirties in the African-American community. They are very derogatory positions that African-Americans had to take to get things done. I use those terms to describe the relationship between the African-Americans in those -- in those Districts, especially those East Texas Districts because that is the relationship the way I term it between the African-Americans and those members that hold those seats.

Q. The way you term it, the African-Americans who

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are in those communities of interest in those Districts have to go with their hat in their hands to these white Anglo Congressman to get them to support their bills or their issues. Is that what you're saying?

A. They got to beg and plead. They got to say, you know, we've got problems in our community with HIV, we got problems in our community with education, can you please help us with this? And that's one of the reasons that -- that we get so much -- so many calls from their areas for help because they can't get it out of their own folks.

Q. Can you tell me anytime that an African-American constituent has approached one of the seven Anglo Democrats in question and gone begging, as you put it?

A. No. I can tell you some of them -- some of the African-Americans that live in their Districts call me all the time across the State for help on Federal matters because they can't get any help out of their Congress persons.

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Q. Mr. Wilson, you talk about the -- how the train is on the tracks and there's a steam roller coming down the tracks and that what you have to do is to do your best to protect the African-American voters that you represent and that the Republicans have the numbers and the thing to do now is to do something like you tried to get done here, which is to get a new African-American majority opportunity District. Is that a fair summary?

A. I've tried do this when there was Democratic leadership in both houses and in the Governor's Office, and they wouldn't do it. There's enough African-American

population in Houston to justify having a second Senate seat, but the Democrats didn't do it.

So if I have the opportunity -- I offered a plan to do that when Democrats were in control and I offered the same plan when Republicans were in control. It doesn't matter who's in control. I'm trying to advance the interests of my community, period.

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Page 135 [Phil King]

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Q. (By Mr. Taylor) Let's go to, sort of the political deal making, if you will, that you're aware of that went into how Tarrant and Dallas counties were configured in Plan 1374. Of your own personal information, what was going on there politically?

A. Well, there were a lot of things involved in Tarrant County. Can I use this laser?

Q. Sure.

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A. If -- the way I would approach the map is I would always look at the existing map and then I would try to look at each District and say okay, how do we make this District more Republican. And you do that in two ways. One, bring up more Republicans into the District, or you -- if you can't get the numbers up high for Republican, then you try to break up the District and break up the benefit of incumbency for the -- from the incumbent. But at the same time we didn't want to lose any seats in doing this. For example, in District 12, Kay Granger we had become aware through the process that it was probably better for her not to move into northeast Tarrant County. At one time we considered doing that, but when she was Mayor of Ft. Worth they had sued the city of Grapevine

over an issue with D/FW Airport. There were concerns there might still be issues. Plus, if all of a sudden we dumped a whole bunch of Republicans, because they're thick out here, into Kay's District, she probably would have got a Primary opponent, and we were trying to avoid that thing.

Kent Grusendorf, you know, my job was to get eight votes aye on the redistricting committee then 76 on the Floor and then six in the conference committee. And Kent Grusendorf had said that he -- that he would not support any plan -- he was on the redistricting committee -- that did not keep the City of Arlington whole. He said

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Arlington always gets split up. He wanted it whole. We were all committed, and all made an informal pact -- I say we all, a number of us, that we wanted to make sure we tried to provide a District that Kenny Marchant could run and Kenny Marchant would win in. And that meant bringing up his area around Coppell and all of that into a District.

I had also been directed by the Speaker of the House -- Glenn Lewis, was the first Democrat and the first minority member to come out supporting him publicly for Speaker. And Glenn Lewis had asked the Speaker that his District not be divided up, but remain intact within a Congressional District, nonspecific as to which District, although he made it clear his preference was that it stay in a Martin Frost District.

So I was directed by the Speaker of the House to under no circumstances split up Glenn Lewis' House seat, which is 95.

Well, that also means that you're narrowed down in how you do that. So ultimately -- and then I wanted to bring Kay Granger's District, she currently

represented Parker County. Wise County was being represented in West Texas, but their economics and transportation and everything in growth is coming out of Denton and Tarrant, so I wanted to bring them into Kay

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Granger's District.
So, for example -- so what we did in Tarrant County, the only way we could do that is basically took Stop Six Poly and Handley and Meadowbrook area and all of that and moved it up into north and tied it in with the Denton County area. And those -- we tried to, the best we could, maintain the city limit lines for Ft. Worth and for Arlington in that measure. And generally, you had that level of politics going on in every county, particularly the metropolitan ones throughout the State.
Even where you didn't have -- and that was the interesting thing. People kept talking about the public testimony. But the members did a great job. I mean, we're a Republic. We're representatives. And the members did a great job of making sure that we knew exactly what they expected for their Districts, even if they said I can't vote on this, but it would be better if you did this. And there was tremendous input and political considerations drove the day throughout the State.
Q. The fact that you were from Parker and Wise County in terms of your House District representation, did that not influence the drawing of the map at all?
A. Oh, absolutely. If -- you know, I had to get -- that's about 48,000 people there and about 90, 89,000

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right there, well, that means I can only have 500,000 left in Tarrant County. So that moved Kay's District -- Kay Granger's District to the west, and you've got to make up for that on the east.

Q. Tell us if you had any conversations with Representative Luna about what she wanted and how did that work its way out --

A. Sure.

Q. -- in the map?

A. Vilma Luna was on the redistricting committee. I very much wanted her vote. She did vote for the map at the committee level. Her primary concern was she wanted Nueces and San Patricio to stay together, to stay intact. We tried that all the way through. The reason she wanted that is because that would allow the Corpus Christi area to have a greater opportunity to continuing to elect a member out of that District. In fact, that was a running battle between her and Kino Flores. He wanted the population more at the bottom so his area would have a greater chance in that.

Ultimately -- and we were able to hold that together for her all the way until we got to the conference committee. Finally, when I realized we were not going to be able to do it, the Senate had some other ideas for San Pat., I went and sat down with Vilma a

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couple of days before we drew the final bill, and we sat down and I said, what areas do you absolutely have to have in San Pat.? And we drew those out, which were the port areas, the cities Inglewood and those, and drew it and tried to satisfy her as best we could.

Q. The allegation has been made that the way the map was drawn was to try to hurt minorities. What's your take on that based on everything you did and that you know and observed?

A. Well, absolutely not. I mean, frankly, we did everything we could to try to make sure that we had a map that would pass legal muster. I mean, the last thing we wanted to do was to go through all this grief and all this work and three special sessions and now lawsuits and everything is and then have a map that failed DOJ. Everything was focused on trying to get through DOJ.

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Q. (By Mr. Smith) Now, let me ask you about the new District 25 in South Texas. Is there any doubt in your mind that the reason that that District was created was to add an additional Hispanic District between the border and Travis County?

A. Well, no. That was the purpose. But the -- the concern was that District 23, because we had put more Republicans in there, might not be a -- considered a Hispanic District. And so the advice was that we should create an additional District.

There were other reasons for doing that, as well. Frankly, the population growths in that area. I mean, if you just beamed in from outer space, you would probably take and draw a Hispanic seat right down at -- right down at the base of Texas because the population demands it. But the problem is, the way the Voting Rights Act is it makes it very, very difficult to do what common sense would otherwise dictate, and that's draw a seat where it should be. And really the only way we could do it was to do that, what some people call a slot map, a slot District.

Q. And the reason why that was the only way to do it was because you were leaving 350,000 Hispanics in District 23, Mr. Bonilla's District; is that right?

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A. Well, no. The only reason you could do it -- the only reason you had to do it that way is because under the Voting Rights Act, any other way we tried to do it, we kept being told that it would cause retrogression in the adjoining Districts. The only way to avoid that was to do it in that long, narrow District.

Q. In order to avoid retrogression, you needed the Hispanics in Travis County to up the numbers; is that right?

A. Well, I think you had to go up there to pick up the Hispanics, yes.

Q. Okay. Now, you certainly wouldn't --

A. But that was also -- see, that makes it sound simpler than it was. There was also the ongoing effort to figure out how we do District 10 into a District that a Republican can get elected. Well, to do that you've got to move Democrats out of District 10, and one way to do that was to put them in District 25.

Q. So it kind of did both of those purposes at the same time?

A. Yeah, absolutely. I mean, our objective was always how do we get more Republican seats and stay away from Districts that would create issues for DOJ.

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December 19, 2003, 8:00 a.m. Session

Page 7 [Todd Giberson]

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Q. And what do you do for a living?

A. I am a redistricting analyst and a geographer -- geographic information systems programmer for the Attorney General's office.
Q. When did you start there?
A. In 1994.
Q. What is your educational background?
A. I am a geographer -- geography major, computer science minor from Texas State University.
Q. After college, where did you work?
A. I first went to work for the Texas Legislative Council in their redistricting division there.
Q. What did you do when you worked for the Texas Legislative Council?
A. Primarily, at first, I was the lead programmer in the development of the original RedAppl system in the 1990s.

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Q. So are you to blame for this? The RedAppl program is something you did?
A. I had a hand in it, yes.
Q. After being part of that effort, what else did you do with the Texas Legislative Council?
A. I also did other sorts of reports. I began some analysis following the Shaw ruling in '93 while I was still there, to -- in order to look for ways to evaluate Districts in light of that ruling.
Q. Give us some examples.
A. Well, for example, the development of compactness measures. I was called back to the Legislative Council to program the compactness measures that are in the current RedAppl system in the new -- because of my working with compactness measures and have been immersed with -- in

17 redistricting plans for many -- over 10 years.

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16 Q. Okay. Let's now turn to the next set of
17 exhibits in this document and let's talk specifically about
18 Districts 15, 25 and 28, and then we'll talk about your
19 demonstration map.
20 Tell us, based on your experience, whether
21 or not Districts 15, 25 and 28 in Plan 1374 have any
22 kind of compactness measures or other peculiarities
23 which you would deem significant in a Shaw V. Reno
24 sense?
25 A. Well, the only thing that might be significant

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1 would be that small circle compactness for 15 and
2 25. But again, it's -- when you consider the way
3 that Districts are constructed in Texas, in West
4 Texas, in South Texas, particularly Hispanic
5 Districts coming out of The Valley, it is common
6 practice to begin a District in The Valley and bring
7 it northward.
8 It's commonly done by anyone drawing --
9 anyone attempting to draw Hispanic Districts will
10 come up north in elongated fashion. These tend to
11 stick a lot with whole counties.

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24 Q. Now, let's turn to your demonstration plan for
25 the northern border of District 25 in Travis

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1 County. What were you trying to demonstrate?

A. Well, I thought it -- it might be -- I looked at the -- compared the cut into Travis County overlaid on top of the Hispanic percentages, and I wanted to see how closely they are trying to excise Hispanics from Travis County to include into this District. And when I looked, there was not really that great of a correlation in the District as it was drawn in 1374. And so I went and did a demonstration plan where I went in and brought in blocs that had high Hispanic densities and then took out some of the other nearby blocs that did not have those high densities to see what a District would really look like if someone was really solely concentrating on race or ethnicity to draw the District boundary. And so that's what this demonstration plan shows.

Q. All right. The fact that the demonstration plan is different than the actual Travis County portion of District 25 in Plan 1374C, of what relevance or importance is that to you?

A. Well, it all goes back to demonstrating whether there was an -- to any extreme degree, was there an attempt to separate one race or ethnicity from another.

Q. To ask it in a more global fashion, if the

question for the Court is whether or not race is the predominating factor in the configuration of the lines of the Districts in the Legislative Plan of 2003 that they're reviewing, what is your opinion in that regard based on your analysis?

A. I would -- I say no, that race is not predominated over other factors in the drawing of the lines.

Q. Let's turn to the next part of your exhibit, and that's the sort of spreadsheet that says, Analysis of VTDs at District Boundary. Please explain that document for the benefit of the Panel.

A. Well, this is more just a helpful tool to look at. And I utilized this in evaluating the demonstration plan that I had drawn in Travis County compared to 1374 as drawn in Travis County, to provide some kind of empirical evidence of what's happening at the border and how finely tuned the cut is to bring the Hispanics into District 25.

Q. And what did you find?

A. I found that -- and so -- let me explain basically the methodology. I took any VTD that was along crossing the border or adjacent to the border of District 25 in Travis County and then the ethnic breakdown along with some other statistics were generated for the portions of those VTDs down to the bloc level that were just inside

the boundary and compared that to those just outside the boundary and noted that in -- the top -- top section here, in the demonstration District, if I looked at something like Hispanic VAP on the inside, it was 47.99 percent Hispanic VAP, that inside section.

Q. And there's sort of some shading over that figure in your report?

A. Yes. It's hard to make out on some of these copies.

Q. And the top, just so we're on the same page here, the top portions are statistics for the demonstration District 25?

A. Yes.

Q. All right.

A. Yes.

Q. Keep going.
A. So then compare that -- now, it has comparisons by the Districts that are adjacent. Then you see a total, the outside total at the bottom, 27.77. So if you go just on the demonstration plan now, if you go just inside the District to just outside the District here, you've got a drop there of over 25 percent in -- of Hispanic VAP. Then I ran the same exact report for the District 25 as it was in 1374.
And you'll see there, using again Hispanic

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VAP, just inside the District, 37.9. Just outside the District, 24.19. A drop -- a drop of only around 13 and a half points. A much milder drop, again, not evidence that race is predominated in the separate -- in the drawing of that District.
Q. Why do you have, at the bottom of the page, the 1000C District 28 in Comal County statistics?
A. Well, I thought I might ought to provide some other real world District. This -- this one happens to have quite a high drop. Just inside 53.62 in Hispanic VAP. Just outside, 15.79, for a drop of some 37 or so percent. But I included it here because that cut into Comal has already been looked at, evaluated by the Courts, because it was part of that remedial plan 746, now 1000. Looked at and specifically identified by the Court and okayed by the Court as not being particularly egregious in comparison to the whole District.
Q. Let's quickly go through the remaining attachments to your original report. You have District 23 in the Court's plan. You have District 19 in the State Senate plan, which for purposes of the record is labeled as

1188C, and that's the LRB plan of two years ago, and you also, finally, have District 31 from the State Senate plan. Would you explain why these are in here and

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what it demonstrates in your opinion?

A. Let me make one correction, that 01188, where it says C, it should be S. These are actually Senate plans, and that's just a mistake.

Q. Thank you.

A. On my part.

The reason these are included is because another way to look at District 25, District 28 and District 15 that cover a long territory, and people have complained about the connection between Travis County and McAllen, for example, to show, in Texas anyone drawing Districts, especially in West Texas and down in South Texas, is going to be going, in this case, from District 23 from El Paso, over 500 miles, into San Antonio and down into Laredo. It covers a much longer distance than from the 300 miles from Travis to McAllen. And to give another example of the -- in the current State Senate Plan of District 19, which also goes from El Paso on the border of Texas on in to pick up Hispanic -- primarily Hispanic population in Bexar County, San Antonio area, again, over 500 miles.

And then we look at the State Senate plan again, District 31, which goes from the Oklahoma border, reaches down through Amarillo, by-passes the metropolitan

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center of Lubbock by a single county-wide strip, and then

picks up the Odessa-Midland area, even going as far south as Crane County.

Q. Okay.

A. That's over 400 miles there it's traversed.

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Q. Mr. Giberson, Mr. Hirsch asked you on cross-examination a series of questions preparing smallest circumscribing circle scores of certain Districts in Plan 1374C with previous District configurations for Congress in the State of Texas. If he had instead asked you to compare

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perimeter-to-area scores of those same Districts, would your answers have changed?

A. Yes. They would have -- my answer would have been very different.

Q. And why would it have been different?

A. The perimeter scores are much worse in those previous plans -- say the 657 plan and those Districts that were gone over in perimeter score than the Districts in 1347.

Q. On cross-examination Mr. Hirsch also asked you a series of questions comparing smallest circumscribing circle scores of certain Districts in Plan 1374C with previous District configurations outside the State of Texas for Congress. If he had asked you to make that same comparison looking, though, at perimeter-to-area scores, would your answers have changed?

A. They would have been different, yes.

Q. And how would they have been different?

A. Well, the Florida District, Georgia District,

those are much worse in perimeter compactness than what we're looking at here in 1374.

Q. So if Plan 1374C does a better job on perimeter-to-area scores than they allege it does on smallest circumscribing circle scores, which factor, in your opinion, is more important?

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A. Well, certainly the perimeter score is a better measure of what -- a high perimeter score, for example, would be a better measure of what the Court doesn't like. Say using that as a measurement tool.

Q. So, if you're looking at perimeter-to-area on one hand and smallest circumscribing circle on the other, what is your expert opinion about how the Court should give weight to those two scores?

A. Well, I would hesitate to try to weigh those scores, but as a measuring tool, the perimeter score had more applicability, certainly in Texas and many of these other Districts, to the Districts that were struck down. The perimeter score is really what shows how convoluted, picked apart the boundaries are on race or ethnicity. And that's more of a better gauge, I would say, than smallest circle score.

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